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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 445 / 180

A. C. FINNEY, AS RECEIVER, AMERICAN SAVINGS AND LOAN ASSOCIATION; W. D. HALE, AS RECEIVER &c., ET AL., PLAINTIFFS IN ERROR,

vs.

MARY E. GUY AND MARY A. GUY AS EXECUTRIX AND SOLE RESIDUARY LEGATEE OF CHARLES T. GUY, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF [illegible]

(18,296.)

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IN ERROR TO THE SUPREME COURT OF THE STATE OF WISCONSIN.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., FEBRUARY 5, 1902.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Wisconsin, Greeting:

Because that in this record and proceedings and also in the rendition of the judgment of a plea which is in the supreme court of the State of Wisconsin, before you or some of you, being the highest court of law or equity in said State in which a decision could be had in the said suit between A. C. Finney, as receiver, American Savings and Loan Association, W. D. Hale, as receiver of said American Savings and Loan Association, Charles Wolsfeld, C. G. Melquist, Mrs. H. Adams, John H. Jordan, C. G. Carr, agent, Mrs. B. D. Adams, Cassius M. Conrad, Samuel H. Hall, C. S. Hulbert as city treasurer of the city of Minneapolis, Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles G. Van Wert, J. D. Laddy, Merchants' Bank of Winona, People's Savings & Loan Association, Guaranty Savings & Loan Association, A. E. Leckie, H. Wehman, and Harrison Pratt and Samuel M. Pratt, copartners as H. Pratt & Co., as plaintiffs, and Mary A. Guy, and Mary A. Guy as executrix and sole residuary legatee under the will of Charles V. Guy, deceased, as defendants, wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege or exemption, specially set up or claimed under such clause of the said Constitution, treaty, statute or commission, a manifest error hath happened to the great damage of A. C. Finney, as receiver, American Savings and Loan Association, W. D. Hale, as receiver of said American Savings and Loan Association, Charles Wolsfeld, C. G. Melquist, Mrs. H. Adams, John H. Jordan, C. G. Carr, agent, Mrs. B. D. Adams, Cassius M. Conrad, Samuel H. Hall, C. S. Hulbert as city treasurer of the city of Minneapolis, Andrew Sundberg, W. R.
2 Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles G. Van Wert, J. D. Laddy, Merchants' Bank of Winona, People's Savings & Loan Association, Guaranty Savings & Loan Association, A. E. Leckie, H. Wehman, and Harrison Pratt and Samuel M. Pratt, copartners as H. Pratt & Co., as by their complaint appears, we being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf do command you that, if judgment be therein given, that then, under your seal, distinctly and openly you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within thirty days from the date hereof, that, the record and proceedings aforesaid

being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to laws and customs of the United States should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 28 day of September, A. D. 1901.

[Seal U. S. Circuit Court, Western Dist. of Wisconsin, Madison.]

[Signature illegible],
Clerk of the Circuit Court of the United States
in and for the District of Wisconsin.

3 [Endorsed.] A. C. Finney, as receiver, *et al.*, plaintiffs, *vs.* Mary A. Guy, defendant. Writ of error. Filed Sep. 28 1901 Clarence Kellogg, clerk of supreme court, Wis.

STATE OF WISCONSIN, *Supreme Court,* } *ss:*

The return to the within writ appears by the schedule hereto annexed.

The return of the justices of the supreme court of the State of Wisconsin.

CLARENCE KELLOGG, *Clerk.*

4 STATE OF WISCONSIN:

Supreme Court.

A. C. FINNEY, as Receiver; AMERICAN SAVINGS AND LOAN Association; W. D. Hale, as Receiver of said American Savings and Loan Association; Charles Wolsfeld, C. G. Melquist, Mrs. H. Adams, John H. Jordan, C. G. Carr, Agent; Mrs. B. D. Adams, Cassius M. Conrad, Samuel H. Hall, C. S. Hulbert, as City Treasurer of the City of Minneapolis; Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles G. Van Wert, J. D. Laddy, Merchants' Bank of Winona, People's Savings & Loan Association, Guaranty Savings & Loan Association, A. E. Leckie, H. Wehman, and Harrison Pratt and Samuel M. Pratt, Copartners as H. Pratt & Co., Plaintiffs and Appellants,

vs.

MARY A. GUY and MARY A. GUY as Executrix and Sole Residuary Legatee under the Will of Charles V. Guy, Deceased, Defendant and Respondent.

To the Honorable John B. Cassoday, chief justice of the State of Wisconsin:

Now come A. C. Finney as receiver, American Savings and Loan Association, W. D. Hale, as receiver of said American Savings and

Loan Association, Charles Wolsfeld, C. G. Melquist, Mrs. H. Adams, John H. Jordan, C. G. Carr, agent, Mrs. B. D. Adams, Cassius M. Conrad, Samuel H. Hall, C. S. Hulbert as city treasurer of the city of Minneapolis, Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles G. Van Wert, J. D Laddy, Merchants' Bank of Winona, People's Savings & Loan Association, Guaranty Savings & Loan Association, A. E. Leckie, H. Wehman, and Harrison Pratt and Samuel M. Pratt, copartners as H. Pratt& Co., plaintiffs in the above-entitled cause, and complain that in the records and proceedings, and also in the rendition of judgment in a suit between said complainants as plaintiffs and Mary A. Guy and Mary A. Guy as executrix & sole residuary legatee under the will of Charles V. Guy deceased as defendant, in the supreme court of the State of Wisconsin, in which a final judgment was rendered against said plaintiffs in said suit on the 24th day of September, 1901, dismissing said action, for the reason that manifest error hath intervened in the rendition of said judgment of said supreme court of Wisconsin in this:

1. It denies plaintiff a right given by sec. 1, art. IV of the Constitution of the United States which reads:

"Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof."

And the following statute passed in pursuance thereof, to wit:

Revised Statutes of the U. S., sec. 905: "The acts of the legislature of any State or Territory, or of any country subject to the jurisdiction of the United States, shall be authenticated by having the seals of such State, Territory, or country affixed thereto. The records and judicial proceedings of the courts of any State or Territory, or of any such country, shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with the certificate of the judge, chief justice, or presiding magistrate, that the said attestation is in due form. And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken."

2. It is contrary to sec. 1, article IV of the Constitution of the United States and to section 905 of the Revised Statutes of the United States, in that it does not give full faith and credit to the public acts, records and judicial proceedings of the State of Minnesota, and does not give to the public acts, records and judicial proceedings of the State of Minnesota such faith and credit as they have by law and usage in the courts of the State of Minnesota.

Wherefore, said plaintiffs in said suit pray for the allowance of a

writ of error, and for such other process as may cause the
6 same to be corrected by the Supreme Court of the United States.

FRED. W. REED,
W. E. HALE, AND
F. M. WHITE,
Attorneys for A. C. Finney, as Receiver et al., said Plaintiffs.

Allowed:
JOHN B. CASSODAY,
Chief Justice of the Supreme Court of the State of Wisconsin.

Madison, Wis., Sept. 27th, 1901.

I am requested by the attorney for the plaintiffs to state, as the fact is, that upon the hearing in this court, he argued orally, and in his printed brief, that not to enforce the judgment of the Minnesota court, was to refuse to give due faith and credit to the judgment of a sister State.

Dated, September 27th, 1901.

JOHN B. CASSODAY,
Chief Justice of the Supreme Court of the State of Wisconsin.

7 [Endorsed:] Original. State of Wisconsin, supreme court. A. C. Finney as receiver, *et al.*, pl'ff- and appel., *vs.* Mary A. Guy, def't and resp't. Petition for writ of error. Filed Sep. 28 1901 Clarence Kellogg, clerk of supreme court, Wis.

8 UNITED STATES OF AMERICA, *ss:*

To Mary A. Guy and Mary A. Guy, as executrix and sole residuary legatee under the will of Charles V. Guy, deceased, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to the writ of error filed in the clerk's office of the supreme court of the State of Wisconsin, wherein A. C. Finney, as receiver, American Savings and Loan Association, W. D. Hale, as receiver of said American Savings and Loan Association, Charles Wolsfeld, C. G. Melquist, Mrs. H. Adams, John H. Jordan, C. G. Carr, agent, Mrs. B. D. Adams, Cassius M. Conrad, Samuel H. Hall, C. S. Hulbert as city treasurer of the city of Minneapolis, Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles G. Van Wert, J. D. Laddy, Merchants' Bank of Winona, People's Savings & Loan Association, Guaranty Savings & Loan Association, A. E. Leckie, H. Wehman, and Harrison Pratt and Samuel M. Pratt, copartners as H. Pratt & Co., are plaintiffs in error and you, Mary A. Guy, and Mary A. Guy as executrix and sole residuary legatee under the will of Charles V. Guy, deceased,

are defendants in error, to show cause, if any there be, why the judgment rendered against said plaintiff- in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John B. Cassoday, chief justice of the supreme court of the State of Wisconsin, this 27th day of September, A. D. 1901.

JOHN B. CASSODAY,
Chief Justice of the Supreme Court, State of Wisconsin.

9 [Endorsed:] Original. A. C. Finney as receiver, *et al.*, plaintiffs, *vs.* Mary A. Guy, defendants. Citation. Filed Oct. 17, 1901. Clarence Kellogg, clerk of supreme court, Wis.

STATE OF WISCONSIN, } *ss*:
St. Croix County, }

F. S. Bell, being by me first duly sworn, deposes and says that he is sheriff of St. Croix Co. Wisconsin, that on the 1st day of Oct. A. D. 1901 at the city of Hudson in said county he duly and personally served the within writ of error on John W. Bashford, Esq., the attorney for Mary A. Guy and Mary A. Guy, as executrix and sole residuary legatee under the will of Charles V. Guy, deceased, by delivering to and leaving with said John W. Bashford a true copy thereof, that at the time he served said writ on said Bashford he made the following endorsement thereon: "Served on J. W. Bashford Esq., the 1st day of October 1901. Fred S. Bell, sheriff, St. Croix Co., Wis."

FRED S. BELL,
Sheriff, St. Croix Co., Wis.

Subscribed and sworn to before me this 5th day of Oct., 1901.

[Seal Circuit Court, St. Croix Co., Wisconsin.]

W. J. EGBERT,
Clerk Circuit Court.

Fees.

Service	1.00
2 m. travel	.20
	$1.20

10 In the Supreme Court of the United States.

A. C. FINNEY, as Receiver; AMERICAN SAVINGS AND LOAN ASSOCIATION; W. D. Hale, as Receiver of said American Savings and Loan Association; Charles Wolsfeld, C. G. Melquist, Mrs. H. Adams, John H. Jordan; C. G. Carr, Agent; Mrs. B. D. Adams, Cassius M. Conrad, Samuel H. Hall; C. S. Hulbert, as City Treasurer of the City of Minneapolis; Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles G. Van Wert, J. D. Laddy, Merchants' Bank of Winona, People's Savings & Loan Association, Guaranty Savings & Loan Association, A. E. Leckie, H. Wehman, and Harrison Pratt and Samuel M. Pratt, Copartners as H. Pratt & Co., Plaintiffs in Error,

vs.

MARY A. GUY and MARY A. GUY as Executrix and Sole Residuary Legatee under the Will of Charles V. Guy, Deceased, Defendants in Error.

Assignment of Errors.

The plaintiff in error respectfully submits that the supreme court of Wisconsin erred in this:

1. That it denies plaintiffs a right given by sec. 1, art. IV of the Constitution of the United States which reads:

"Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof."

And the following statute passed in pursuance thereof, to wit:

Revised Statutes of the U. S., sec. 905: "The acts of the legislature of any State or Territory, or of any country subject to the jurisdiction of the United States, shall be authenticated by having the seals of such State, Territory, or country affixed thereto. The records and judicial proceedings of the courts of any State or Territory, or of any such country, shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with the
11 certificate of the judge, chief justice, or presiding magistrate, that the said attestation is in due form. And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken."

2. That its decision and judgment is contrary to section 1, article 4 of the Constitution of the United States, and to section 905 of the Revised Statutes of the United States in that it does not give full faith and credit to the public acts, records and judicial proceedings of the State of Minnesota, and does not give to the public acts, rec-

ords and judicial proceedings of the State of Minnesota such faith and credit as they have by law and usage in the courts of the State of Minnesota.

3. In holding and deciding that to refuse to enforce plaintiffs' right of action in the courts of Wisconsin, is not violative of section 1, article 4 of the Constitution of the United States and section 905 of the Revised Statutes of the United States which provides that the public acts, records and judicial proceedings of every State shall have such faith and credit given them in every court within the United States as they have by law or usage in the courts of the State from which they were taken.

Wherefore, the plaintiffs in error pray that the order and judgment of the supreme court of Wisconsin be reversed and that said court be directed to enter an order overruling the demurrer to plaintiffs' complaint and such other relief as to this court seems just.

FRED. W. REED,
W. E. HALE, AND
F. M. WHITE,
Attorneys for Plaintiffs in Error.

12 [Endorsed:] Original. United States Supreme Court. A. C. Finney as receiver, *et al.*, pl'ffs in error, *vs.* Mary A. Guy, def't in error. Assignments of error filed in State supreme court. Filed Sep. 28 1901 Clarence Kellogg, clerk of supreme court, Wis.

13 Supreme Court of the United States, *ss.*

A. C. FINNEY, as Receiver; AMERICAN SAVINGS AND LOAN ASSOCIATION; W. D. Hale, as Receiver of said American Savings and Loan Association; Charles Wolsfeld, C. G. Melquist, Mrs. H. Adams, John H. Jordan; C. G. Carr, Agent; Mrs. B. D. Adams, Cassius M. Conrad, Samuel H. Hall; C. S. Hulbert; as City Treasurer of the City of Minneapolis; Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles G. Van Wert, J. D. Laddy, Merchants' Bank of Winona, People's Savings & Loan Association, Guaranty Savings & Loan Association, A. E. Leckie, H. Wehman, and Harrison Pratt and Samuel M. Pratt, Copartners as H. Pratt & Co., Plaintiffs in Error,

vs.

MARY A. GUY and MARY A. GUY as Executrix and Sole Residuary Legatee under the Will of Charles V. Guy, Deceased, Defendant in Error.

Know all men by these presents, that The American Bonding and Trust Company of Baltimore City, a corporation, is firmly bound unto Mary A. Guy in the sum of two hundred and fifty ($250.00) dollars, to be paid to the said Mary A. Guy, to which payment well and truly to be made it binds itself, and its successors and assigns, firmly by these presents.

Sealed with its seal and dated this 27th day of September, A. D. 1901.

Whereas, the above-named plaintiffs have prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the supreme court of the State of Wisconsin;

Now, therefore, the condition of this obligation is such that if the above-named plaintiffs in error shall prosecute their said writ of error to effect and answer all costs if they shall fail to make
14 good their plea, then this obligation shall be void; otherwise to remain in full force and effect.

THE AMERICAN BONDING & TRUST COMPANY OF BALTIMORE CITY,
By MATTHEW S. DUDGEON, *Vice-President.*
HENRY H. NOBLE. [SEAL.]

Signed, sealed and delivered in presence of—

——— ———.

15 [Endorsed:] Finney *vs.* Guy. Bond on writ of error. Copy.

16 STATE OF WISCONSIN, }
Department of Insurance. }

The American Bonding and Trust Company, of Baltimore City, located at Baltimore in the State of Maryland having furnished to the undersigned commissioner of insurance due proof of its possessing the qualifications required by the laws of the State of Wisconsin relating to suretyship corporations, and having complied with said laws,

Now therefore, this is to certify that said American Bonding & Trust Company, has qualified and is authorized to transact within this State the business of a suretyship corporation under the statutes of this State until the first day of March, A. D. 1902 unless this certificate be sooner revoked.

Witness my hand and official seal at Madison, Wisconsin, this 1st day of March, A. D. 1901.

[SEAL.] EMIL GILJOHANN,
Commissioner of Insurance.

I, Emil Giljohann, commissioner of insurance of the State of Wisconsin, hereby certify that I have compared the foregoing copy with the original certificate of authority, number 21, issued to the American Bonding & Trust Company, and on file in my office, and that the same is a true copy of said original and of the whole thereof.

Witness my hand and official seal at Madison, Wisconsin, this 27th day of Sept., A. D. 1901.

[SEAL.] EMIL GILJOHANN,
Commissioner of Insurance.

17 [Endorsed:] Bond Copy I herewith approve the within bond & surety this 27th day of September 1901. John B. Cassoday chief justice supreme court of Wisconsin. Filed. Sep. 28 1901 Clarence Kellogg, clerk of supreme court, Wis.

18 Pleas before the supreme court of the State of Wisconsin, at a term thereof begun and held at the capitol in Madison, the seat of government of said State, on the second Tuesday, to wit, the thirteenth day, of August, A. D. 1901.

Present: John B. Cassoday, chief justice, John B. Winslow, Roujet D. Marshall, Charles V. Bardeen, and Joshua Eric Dodge, justices.

CLARENCE KELLOGG, *Clerk.*

Be it remembered that heretofore, to wit: on the seventh day of June, in the year of our Lord one thousand nine hundred and one, came into the office of the clerk of the supreme court of the State of Wisconsin, A. C. Finney, as receiver, American Savings and Loan Association, W. D. Hale, as receiver of said American Savings and Loan Association, Charles Wolsfield, C. G. Melquist, Mrs. H. Adams, John H. Jordan, C. G. Carr, agent, Mrs. B. D. Adams, Cassius H. Conrad, Samuel H. Hall, C. S. Hulbert as city treasurer of the city of Minneapolis, Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles G. Van Wert, J. D. Laddy, Merchants' Bank of Winona, People's Savings and Loan Association, A. E. Leckie, H. Wehman, and Harrison Pratt and Samuel Pratt, copartners as H. Pratt & Co., and filed in said court their certain notice of appeal and undertaking, according to the statute in such case made and provided, and also the return to such appeal,
19 of the clerk of the circuit court of Pierce county, in said State, in the words and figures following, that is to say:

20 (*Notice of Appeal.*)

STATE OF WISCONSIN:

In Circuit Court for Pierce County.

A. C. FINNEY, as Receiver; AMERICAN SAVINGS AND LOAN ASSOCIATION; W. D. Hale, as Receiver of said American Savings and Loan Association; Charles Wolsfeld, C. G. Melquist, Mrs. H. Adams, John H. Jordan, C. G. Carr, Agent; Mrs. B. D. Adams, Cassius M. Conrad, Samuel H. Hall, C. S. Hulbert, as City Treasurer of the City of Minneapolis; Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles G. Van Wert, J. D. Laddy, Merchants' Bank of Winona, People's Savings and Loan Association, A. F. Leckie, H. Wehman, and Harrison Pratt and Samuel Pratt, Copartners as H. Pratt & Co., Plaintiffs,

vs.

MARY A. GUY and MARY A. GUY as Executrix and Sole Residuary Legatee under the Will of Charles V. Guy, Deceased, Defendants.

SIR-: Please take notice that the plaintiffs in this action, above named, hereby appeal to the supreme court of the State of Wisconsin, from the judgment rendered and entered in this action in the circuit court for the county of Pierce, State of Wisconsin, on the 27th day of March, A. D. 1901, in favor of said defendants and against said plaintiffs, dismissing said action and for the sum of twenty-five dollars costs, and from the whole of said judgment.

Dated the 10th day of April, A. D. 1901.

FRED. W. REED AND
F. M. WHITE,
Plaintiffs' Attorneys.

To John W. Bashford, Esq., defendants' attorney, and to L. G. Spinney, clerk of the circuit court for Pierce county, Wis.

(Endorsements:) Original. State of Wisconsin, county of Pierce, circuit court. A. C. Finney, rec. *et al.*, plaintiffs, *v.* Mary A. Guy, defendant. Notice of appeal. Personal service of the within notice of appeal admitted this 13th day of May, 1901. John W. Bashford, attorney for defendant. F. M. White and Fred W. Reed, attorneys for plaintiffs. Personal service of within notice of appeal admitted this 4th day of June, A. D. 1901. L. G. Spinney, clerk of circuit court. Pierce county, Wis. Filed June 4, 1901. L. G. Spinney, clerk circuit court. Filed June 7, 1901. Clarence Kellogg, clerk of supreme court, Wis.

21 (*Undertaking on Appeal.*)

STATE OF WISCONSIN:

In Circuit Court for Pierce County.

(U. S. rev. stamp, 5 cents.)

A. C. FINNEY, as Receiver; AMERICAN SAVINGS AND LOAN ASSOCIATION; W. D. Hale, as Receiver of said American Savings and Loan Association; Charles Wolfeld, C. G. Melquist, Mrs. H. Adams, John H. Jordan, C. G. Carr, Agent; Mrs. B. D. Adams, Cassius H. Conrad, Samuel H. Hall, C. S. Hulbert, as City Treasurer of the City of Minneapolis; Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles G. Van Wert, J. D. Laddy, Merchants' Bank of Winona, People's Savings and Loan Association, A. F. Leckie, H. Wehman, and Harrison Pratt and Samuel Pratt, Copartners as H. Pratt & Co., Plaintiffs and Appellants,

vs.

MARY A. GUY and MARY A. GUY as Executrix and Sole Residuary Legatee under the Will of Charles V. Guy, Deceased, Defendants and Respondents.

Whereas, on the 27th day of March, A. D. 1901, in the circuit court of Pierce county, Mary Guy *et al.*, the above-named respondents, recovered a judgment against said A. C. Finney *et al.*, the above-named appellants, dismissing said action and for twenty-five dollars costs. That the above-named appellants feeling aggrieved thereby intend to appeal therefrom to the supreme court of the State of Wisconsin.

Now, therefore, the American Bonding and Trust Co. of Baltimore City does hereby, pursuant to the statute in such case made and provided, undertake that the said appellants will pay all costs and damages which may be awarded against them on said appeal, not exceeding two hundred and fifty dollars; and does also undertake that if the said judgment so appealed from, or any part thereof, be affirmed, the said appellants will pay the amount directed to be paid by the said judgment, or the part of such amount as to which the said judgment shall be affirmed, if it be affirmed only in part, and all damages which shall be awarded against said appellants on the said appeal.

THE AMERICAN BONDING AND TRUST COMPANY OF BALTIMORE CITY,

[SEAL.] By LOUIS AUER, *Vice-Pres't.*

Attest: FRANK J. MEYER, [SEAL.]
Ass't Sec'y.

22 (Endorsements:) Pierce county, Wis. Filed June 4, 1901. L. G. Spinney, clerk circuit court. Filed June 7, 1901. Clarence Kellogg, clerk of supreme court, Wis.

23 (*Certificate of Commissioner of Insurance.*)

STATE OF WISCONSIN, }
Department of Insurance. }

The American Bonding and Trust Company, located at Baltimore, in the State of Maryland, having furnished to the undersigned commissioner of insurance due proof of its possessing the qualifications required by the laws of the State of Wisconsin relating to suretyship corporations, and having complied with said laws,

Now therefore, this is to certify that said American Bonding and Trust Company has qualified and is authorized to transact within this State the business of a suretyship corporation under the statutes of this State until the first day of March, A. D. 1902, unless this certificate be sooner revoked.

Witness my hand and official seal at Madison, Wisconsin this first day of March, A. D. 1901.

[SEAL.] EMIL GILJOHANN,
Commissioner of Insurance.

I, Emil Giljohann, commissioner of insurance of the State of Wisconsin, hereby certify that I have compared the foregoing copy with the original certificate of authority, number 21, issued to the American Bonding and Trust Company, and on file in my office, and that the same is a true copy of said original and of the whole thereof.

Witness my hand and official seal at Madison, Wisconsin, this fifth day of March, A. D. 1901.

[SEAL.] EMIL GILJOHANN,
Commissioner of Insurance.

(U. S. revenue stamp, 10 cents.)

24 (Endorsements:) June 1st, 1901. I, E. W. Helms, judge of the circuit court in and for St. Croix county, Wis., hereby allow and approve the within undertaking. E. W. Helms, circuit judge. To which ruling the defendant and respondent duly excepted. E. W. Helms, circuit judge. Pierce county, Wis. Filed June 4, 1901. L. G. Spinney, clerk circuit court. Original. State of Wisconsin, county of Pierce, circuit court. A. C. Finney, as receiver, *et al.*, plaintiffs *v.* Mary A. Guy *et al.*, defendants. Undertaking on appeal. Personal service of the within undertaking and justification admitted this 13th day of May, 1901. John W. Bashford, attorney for defendant. F. M. White and Fred. W. Reed, attorneys for plaintiff, Minnesota. Personal service of within undertaking and certificate of justification admitted this 4th day of June, A. D. 1901. L. G. Spinney, clerk of circuit court. Filed June 7, 1901. Clarence Kellogg, clerk of supreme court, Wis.

25 (*Exception to Sureties.*)

STATE OF WISCONSIN:

In Circuit Court for Pierce County.

A. C. FINNEY, as Receiver; AMERICAN SAVINGS AND LOAN ASSOCIATION; W. D. Hale, as Receiver of said American Savings and Loan Association; Charles Wolfeld, C. G. Melquist, Mrs. H. Adams, John H. Jordan, C. G. Carr, Agent; Mrs. B. D. Adams, Cassius H. Conrad, Samuel H. Hall, C. S. Hulbert, as City Treasurer of the City of Minneapolis; Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles G. Van Wert, J. D. Laddy, Merchants' Bank of Winona, People's Savings and Loan Association, A. F. Leckie, H. Wehman, and Harrison Pratt and Samuel Pratt, Copartners as H. Pratt & Co., Plaintiffs and Appellants,

vs.

MARY A. GUY and MARY A. GUY as Executrix and Sole Residuary Legatee under the Will of Charles V. Guy, Deceased, Defendants and Respondents.

Please take notice that the above-named defendants except to the sufficiency of the sureties in the undertaking herein on the appeal of the above-entitled action served May 13th, 1901, for the reason that it appears that the American Bonding and Trust Co. of Baltimore City, the surety in said undertaking heretofore served on the appeal in said action is not a householder or freeholder in this State.

The defendants further except because there is only one surety to said undertaking, and that the undertaking fails to comply with the statutes in such case made and provided.

Dated May 24, 1901.

JOHN W. BASHFORD,

Attorney for the Defendants and Respondents Mary A. Guy and Mary A. Guy as Executrix and Sole Residuary Legatee under the Will of Charles V. Guy, Deceased.

To F. M. White and F. W. Reed, attorneys for plaintiffs, River Falls, Wis.

(Endorsements:) Pierce county, Wis. Filed June 4, 1901. L. G. Spinney, clerk circuit court. Original. State of Wisconsin, in circuit court for Pierce county. A. C. Finney *et al.*, plaintiffs *v.* Mary A. Guy *et al.*, defendants. Notice of exceptions to sufficiency of sureties. Service of the copy of the within exceptions admitted this 24th day of May, 1901. F. M. White, att'y for plaintiffs.

26 John W. Bashford, att'y for defendants and respondents, Hudson, Wis. Filed June 7, 1901. Clarence Kellogg, clerk of supreme court, Wis.

27 (*Notice of Justification.*)

STATE OF WISCONSIN:

In Circuit Court for Pierce County.

A. C. FINNEY, as Receiver; AMERICAN SAVINGS AND LOAN Association; W. D. Hale, as Receiver of said American Savings and Loan Association; Charles Wolfeld, C. G. Melquist, Mrs. H. Adams, John H. Jordan, C. G. Carr, Agent; Mrs. B. D. Adams, Cassius H. Conrad, Samuel H. Hall, C. S. Hulbert, as City Treasurer of the City of Minneapolis; Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, Merchants' Bank of Winona, People's Savings and Loan Association, A. F. Leckie, H. Wehman, and Harrison Pratt and Samuel Pratt, Copartners as H. Pratt & Co., Plaintiffs and Appellants,

vs.

MARY A. GUY and MARY A. GUY as Executrix and Sole Residuary Legatee under the Will of Charles V. Guy, Deceased, Defendants and Respondents.

SIR: Please take notice that the American Bonding and Trust Co. of Baltimore City, surety named in the undertaking on appeal served in the above-entitled action, on the 13th day of May, A. D. 1901, by said plaintiffs and appellants on said defendants and respondents, to which you have duly excepted, will justify as required by law before the Hon. E. W. Helms, judge of said circuit court, on the first day of June, A. D. 1901, at nine o'clock a. m. of said day, at his chambers in the city of Hudson, St. Croix county, Wis.

To John W. Bashford, Esq., attorney for said defendants and respondents,

Yours, &c.,

F. M. WHITE AND
FRED W. REED,
Attorneys for Plaintiffs and Appellants.

(Endorsements:) Pierce county, Wis. Filed June 4, 1901. L. G. Spinney, clerk circuit court. Circuit court, Pierce county. A. C. Finney as receiver *et al.*, plaintiffs and appellants *v.* Mary A. Guy *et al.*, defendants and respondents. Notice justification surety. Due personal service within admitted this 27th day of May, A. D. 1901 John W. Bashford, att'y for defendants and respondents. Filed June 7, 1901. Clarence Kellogg, clerk of supreme court, Wis.

28 (*Certificate of Commissioner of Insurance.*)

STATE OF WISCONSIN,
Department of Insurance.

The American Bonding and Trust Company, located at Baltimore, in the State of Maryland, having furnished to the undersigned commissioner of insurance due proof of its possessing the qualifica-

tions required by the laws of the State of Wisconsin relating to suretyship corporations, and having complied with said laws,

Now therefore, this is to certify that said American Bonding and Trust Company has qualified and is authorized to transact within this State the business of a suretyship corporation under the statutes of this State until the first day of March, A. D. 1902, unless this certificate be sooner revoked.

[SEAL.] Witness my hand and official seal at Madison, Wisconsin this first day of March, A. D. 1901.

EMIL GILJOHANN,
Commissioner of Insurance.

I, Emil Giljohann, commissioner of insurance of the State of Wisconsin, hereby certify that I have compared the foregoing copy with the original certificate of authority, number 21, issued to the American Bonding and Trust Company, and on file in my office, and that the same is a true copy of said original and of the whole thereof.

[SEAL.] Witness my hand and official seal at Madison, Wisconsin, this twenty-ninth day of May, A. D. 1901.

EMIL GILJOHANN,
Commissioner of Insurance.

(U. S. rev. stamp, 10 cents.)

(Endorsements:) Filed by me this first day of June, 1901. E. W. Helms, circuit judge. Filed June 4, 1901. L. G. Spinney, clerk circuit court. Filed June 7, 1901. Clarence Kellogg, clerk of supreme court, Wis.

29 (*Summons.*)

STATE OF WISCONSIN:

Circuit Court, Pierce County.

A. C. FINNEY, as Receiver; AMERICAN SAVINGS AND LOAN Association; W. D. Hale, as Receiver of said American Savings and Loan Association; Charles Wolsfeld, C. G. Melquist, Mrs. H. Adams, John H. Jordan, C. G. Carr, Agent; Mrs. B. D. Adams, Cassius M. Conrad, Samuel H. Hall, C. S. Hulbert, as City Treasurer of the City of Minneapolis; Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles G. Van Wert, J. D. Laddy, Merchants' Bank of Winona, People's Savings and Loan Association, Guaranty Savings and Loan Association, A. E. Leckie, H. Wehman, and Harrison Pratt and Samuel M. Pratt, Copartners as H. Pratt & Co., Plaintiffs,

vs.

MARY A. GUY and MARY A. GUY as Executrix and Sole Residuary Legatee under the Will of Charles V. Guy, Deceased, Defendants.

The State of Wisconsin to the said named defendants and each of them:

You are hereby summoned to appear within twenty days after service of this summons, exclusive of the day of service, and defend the above-entitled action in the court aforesaid; and in case of your failure so to do, judgment will be rendered against you according to the demand of the complaint, of which a copy is herewith served upon you.

FRED. W. REED AND
F. M. WHITE,
Plaintiffs' Attorneys.

P. O. address, River Falls, Pierce county, Wis.

30 (*Sheriff's Return and Service.*)

STATE OF WISCONSIN, *Pierce County,* } ss:

I, M. Nugent, sheriff of said county, hereby certify and return that I served the within summons and complaint in the within-entitled action personally on the within-named defendants Mary A. Guy and Mary A. Guy as executrix and sole residuary legatee under the will of Charles V. Guy, on the 28th day of March, A. D. 1899, at the city of River Falls in said county, by then and there delivering to and leaving with each of said defendants a true copy of said

summons and complaint, and I then and there endorsed on said copies so served the date of such service and affixed my official signature thereto.

M. NUGENT, *Sheriff*,
By O. E. GLASS, *Undersheriff*.

Fees.

Mileage, 26 miles	2.60
Service	1.50
2 copies, 158 fols	15.80

Pierce county, Wis. Filed March 31, 1899. L. G. Spinney, clerk circuit court. Filed July 29, 1899. Clarence Kellogg, clerk of supreme court, Wis. Filed June 7, 1901. Clarence Kellogg, clerk of supreme court, Wis.

31 (*Complaint.*)

STATE OF WISCONSIN, }
Pierce County. }

Circuit Court.

A. C. FINNEY, as Receiver; AMERICAN SAVINGS AND LOAN ASSOCIATION; W. D. Hale, as Receiver of said American Savings and Loan Association; Charles Wolsfeld, C. G. Melquist, Mrs. H. Adams, John H. Jordan, C. G. Carr, Agent; Mrs. B. D. Adams, Cassius M. Conrad, Samuel H. Hall, C. S. Hulbert, as City Treasurer of the City of Minneapolis; Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles G. Van Wert, J. D. Laddy, Merchants' Bank of Winona, People's Savings & Loan Association, Guaranty Savings & Loan Association, A. E. Leckie, H. Wehman, and Harrison Pratt and Samuel M. Pratt, Copartners as H. Pratt & Co., Plaintiffs,

vs.

MARY A. GUY and MARY A. GUY as Executrix and Sole Residuary Legatee under the Will of Charles V. Guy, Deceased, Defendants.

32 Plaintiffs for their complaint herein allege: That during all the times herein mentioned the American Savings & Loan Association was, and now is, a corporation, duly organized and existing under and by virtue of the laws of the State of Minnesota; that on the 18th day of June, 1896, William D. Hale was, by the district court in and for Hennepin county, Minnesota, duly appointed receiver of said American Savings and Loan Association, and was duly authorized and required by said court to take charge of the property and effects of said association; that the former name of said association was the American Building and Loan Association and was the same corporation under said name; that during all the times herein mentioned the People's Savings and Loan

Association and the Guaranty Savings and Loan Association were and now are corporations duly organized and existing under and by virtue of the laws of the State of Minnesota; that during all the times herein mentioned Harrison Pratt and Samuel M. Pratt were and now are copartners under the firm name and style of H. Pratt & Co.; that the Farmers' and Merchants' State bank was and now is a banking corporation duly organized and existing, with power to issue circulating notes, and receive deposits, discount bills and notes, and all the powers and privileges of the banking business, on the 6th day of January, 1888, under the laws of Minnesota, and especially under chapter 33 of General Statutes, 1878, of the State of Minnesota, and as such from the time of such
33 organization to June 20th, 1893, exercised banking powers and privileges and conducted a banking business in the city of Minneapolis, Hennepin county, Minnesota, that being its sole place of business; that on the 20th day of June, 1893, said bank became wholly and hopelessly insolvent, and on said day closed the doors of its banking office, suspended payment and ceased to do business, and on said day made a general assignment of all its property in insolvency for the benefit of all its creditors under and pursuant to the laws of the State of Minnesota, but more particularly under chapter 148, of the Laws of 1881, and acts amendatory thereof, to the St. Paul and Minneapolis Trust Company, whose name was afterward changed to the Northern Trust Company; that the said Northern Trust Company was thereafter duly discharged as such assignee and one John M. Norris was duly appointed by said court as such assignee; that said assignee duly accepted said trust and took possession of and reduced all the assets of said bank to cash; that prior to said assignment the State of Minnesota deposited with said bank large sums of money, and on June 20th, 1893, and for a long time prior thereto, there was owing the State of Minnesota from said bank the sum of $28,219.98, which sum was duly proved against the estate of said bank, and said assignee allowed said claim in full; that by the laws of the State of Minnesota the said claim of said State was a preferred claim against the estate of said bank, but not a preferred claim as to the liability of the stockholders of said bank; that the entire net proceeds of said bank's estate was the sum of $12,539.95, and that said assignee duly paid said sum over to said State of Minnesota, of which sum $7,000 was paid prior to April
34 20th, 1897, and $5,539.05 since; and that all said sums were duly applied by said State toward the payment of its said claim, and there is now due and owing the State of Minnesota from said bank the sum of $25,412.73; that said bank has no office, or officer or agent in the State of Wisconsin, and never did have; that said bank has no property or assets of any kind whatever, either in the State of Wisconsin or elsewhere, but that its entire property of every kind and nature has been converted into cash by said assignee and paid to said State of Minnesota on its claim as above set out; that said bank was, on the 20th day of June, 1893, justly indebted to each of the plaintiffs, except A. C. Finney and W. D. Hale in a large sum of money in the aggregate amounting to the sum of $91,255.84,

which sums said plaintiffs respectively had deposited with said bank prior to June 20, 1893; that all said claims were duly filed with the assignee of said bank and duly approved by him, but that no part of any of said claims has ever been paid, except the sum of $12,539.95, paid to said State of Minnesota by said assignee as above stated, and $935.99 paid to said State December 14th, 1898, by A. C. Finney, as receiver, and five per cent. of the face of all the other said claims also paid by said Finney as receiver, on December 14th, 1898; that said sums so owing to each of said plaintiffs, respectively, at said time, were as follows, to wit:

Chas. Wolsfeld	$1,015.33
C. G. Melquist	301.05
Mrs. H. Adams	4,225.38
John H. Jordan	358.15
C. G. Carr, agent	115.68
Mrs. B. D. Adams	1,093.73
35 Cassius M. Conrad	102.50
H. Pratt & Co	142.59
Samuel H. Hall	334.14
A. C. Haugan, as treasurer of Minneapolis	1,020.50
Andrew Sundberg	890.40
W. R. Sinks	3,459.71
David Muston	413.59
C. A. Munson	785.25
Kate Rank	1,737.52
Samuel H. Pratt	1,780.06
State of Minnesota	28,219.98
M. H. Townsend	422.65
Harrison Pratt	1,873.67
Charles G. Van Wert	274.79
J. D. Laddy	814.67
Merchants' Bank of Winona	10,000.00
People's Savings & Loan Association	8,008.39
Guaranty Savings & Loan Association	479.97
American Building & Loan Association	20,422.23
A. F. Leckie	250.00
H. Wehman	2,713.91

That of the total indebtedness to said creditors $13,500.00 accrued prior to October 27, 1892.

That the Merchants' Bank of Winona is a corporation duly organized and existing under and by virtue of the laws of the State of Minnesota, and was so organized and existing during all the times herein mentioned.

That at time of the deposit of said money with said bank by A. C. Haugan he was the duly elected and acting treasurer of the city of Minneapolis, but that since the 20th day of June, 1893, said Haugan has been succeeded in office as treasurer of said city
36 of Minneapolis by C. S. Hulbert, who as such is now the owner and holder of said claim in favor of said Haugan as reasurer of said city of Minneapolis.

That on said 20th day of June, 1893, and for more than one year prior thereto, the capital stock of said Farmers' and Merchants' State bank was $75,000, which was divided into 750 shares of $100 each; that on the 21st day of June, 1892, the defendant, Mary A. Guy, was and ever since has been the owner and holder of three shares of said capital stock; that on the 21st day of June, 1892, the entire capital stock of said bank was owned and held by the following persons and parties and in amounts set opposite their respective names, to wit:

Lannes A. Cordit	2	shares
Charles V. Guy	16	"
Mary A. Guy	3	"
R. E. Weller	5	"
Martin A. Paulson	25	"
Willis A. James	52	"
J. E. Flint	10	"
Mrs. J. W. Adams	5	"
George L. Matchan	5	"
J. W. Pence	15	"
E. H. Daniels	30	"
Jas. A. Tyler	15	"
A. C. Schuknecht	4	"
J. A. Fagan	50	"
F. H. Simpson	7	"
George W. Jenks	20	"
A. Snyder	5	"
Sarah E. Egbert	15	"
Clara A. Loomis	40	"
37 Mary J. Ellis	16	shares
Calista Andrews	20	"
Charles V. Guy, guardian of the estate of N. L. Dunbar, a minor	6	"
F. H. Schofield	15	"
James Leck	1	"
Hiram Van Nest	2	"
G. E. Williamson	10	"
Century Investment Co.	43	"
W. E. Steele	2	"
Calista Andrews, guardian of the estate of Annie Andrews, a minor	20	"
M. F. Schofield	105	"
Robert T. Lang	174	"
Lang & Schofield	12	"

That between the dates of June 20th, 1892, and June 20th, 1893, various shares of said stock were sold and transferred by the parties so owning and holding the same, and that during a portion of said time one William Harder was the owner and holder of ten shares of said stock, and one J. J. Salfinger was the owner and holder of one share of said capital stock, and that on the 20th day of June, 1893, said entire capital stock was owned and held by the following persons

and parties in amounts set opposite their respective names, except as herein below recited as to Charles V. Guy, to wit:

	Lannes A. Condit	2 shares
	M. A. Paulson	25 "
	Lang & Schofield	13 "
	H. S. Miller, guardian of the estate of N. L. Dunbar, a minor	6 "
	Century Investment Company	43 "
38	George W. Jenks	15 shares
	M. F. Schofield	55 "
	C. H. Chadbourne & Sons	5 "
	Leonard Kimball	5 "
	Charles V. Guy	16 "
	R. E. Weller	5 "
	Willis A. James	52 "
	J. E. Flint	5 "
	George L. Matchan	55 "
	E. H. Daniels	30 "
	Mary F. Schuknecht	9 "
	N. Galles	2 "
	William Trenkle	5 "
	Mary A. Guy	3 "
	Harry E. Pence and John W. See, as executors of the last will and testament of J. W. Pence, deceased	15 "
	Jas. A. Tyler	15 "
	J. A. Fagan	50 "
	Sarah E. Egbert	15 "
	Mary J. Ellis	16 "
	F. H. Simpson	6 "
	Clara A. Loomis	40 "
	Calista Andrews	20 "
	F. H. Schofield	15 "
	James Leck	1 "
	Albert Snyder	5 "
	Hiram Van Nest	2 "
	Calista Andrews, guardian of the estate of Annie Andrews, a minor	20 "
	Robert T. Lang	174 "
	Mrs. J. W. Adams	5 "

39 That on the 28th day of October, 1892, Charles V. Guy died testate, leaving a will; that at said time he was, and for more than one year prior thereto had been, the owner and holder of sixteen shares of said capital stock; that at the time of his death he was a citizen and resident of the State of Wisconsin and left property therein, and was the husband of the defendant, Mary A. Guy; that said will of Charles V. Guy was duly probated in the county court in and for the county of St. Croix, in said State of Wisconsin, and that letters testamentary as executrix were duly issued to the defendant, Mary A. Guy, by the county court of said county

on the 6th day of December, 1892; that by the terms of said will she was sole residuary legatee thereunder; that she has received property of said testator thereunder as such executrix and legatee in a sum exceeding $20,000; that ever since said 28th day of October, 1892, said Mary A. Guy, as such executrix and legatee, has been the owner and holder of sixteen shares of said capital stock; that on the 3rd day of March, 1893, said Mary A. Guy as such executrix and sole residuary legatee duly executed and delivered to the judge of said county court a bond to pay all debts and legacies of said testator under and according to section 3 of chapter 67 of the Revised Statutes of Wisconsin of 1849, the same being section 3795 of the Statutes of Wisconsin of 1898; that during all the times herein mentioned said Mary A. Guy was and now is a citizen and resident of the State of Wisconsin; that no time has been fixed in which creditors may present their claims against the estate of said deceased for allowance and no notice of such limitations has been ordered or given.

40 That the General Statutes of the State of Minnesota of 1878 contain the following provisions, which provisions are also in the General Statutes of Minnesota of 1894 in these sections, to wit:

SEC. 2494 (being sec. 14, chap. 33, G. S. 1878). The shares in such bank are personal property, and transferable on the books of the bank in such manner as may be agreed upon in the articles organizing such bank, or prescribed in its by-laws; and every person becoming a stockholder therein shall, in proportion to his interest succeed to all the rights and be subject to all the liabilities of prior shareholders; no change shall be made in the articles organizing such bank whereby the rights, remedies, or securities of existing creditors shall be in any way impaired; and any association constituting such bank shall not be dissolved by the death or insanity of any one of the shareholders therein.

SEC. 2501 (being sec. 21, chap. 33, G. S. 1878). The president and cashier of every bank formed pursuant to the provisions of this chapter, shall at all times keep a true and correct list of the names of all the shareholders of such bank, with the amount of stock held by each, the time of transfer, and to whom transferred, and shall file a copy of such list in the office of the register of deeds of the county wherein such bank is located, and also in the office of the auditor of State, on the first Monday in January and July in each year; and stockholders in each bank shall be individually liable in an amount equal to double the amount of stock owned by them for all the debts of such bank, and such individual liability shall continue for one year after any transfer or sale of stock by any stockholder or stockholders.

41 SEC. 3419 (being sec. 414, chap. 34, G. S. 1878). Persons holding stock in a corporation as executors, administrators, guardians or trustees shall not be personally subject to any liabilities as stockholders; but the estates and funds in their hands shall be liable in like manner and to the same extent as the testator, intestate, ward or person interested in the trust fund would be, if they

were respectively living and competent to act, and held the stock in their own names.

SEC. 5905 (being sec. 17, chap. 76, G. S. 1878). Whenever any creditor of a corporation seeks to charge the directors, trustees, or other superintending officers of such corporation, or the stockholders thereof, on account of any liability created by law, he may file his complaint for that purpose in any district court which possesses jurisdiction to enforce such liability.

SEC. 5906 (being sec. 18, chap. 76, G. S. 1878). The court shall proceed thereon as in other cases, and, when necessary, shall cause an account to be taken of the property and debts due to and from such corporation, and shall appoint one or more receivers.

SEC. 5907 (being sec. 19, chap. 76, G. S. 1878). If, on the coming in of the answer, or upon the taking of any such account, it appears that such corporation is insolvent, and that it has no property or effects to satisfy such creditors, the court may proceed, without appointing any receiver, to ascertain the respective liabilities of such directors and stockholders, and enforce the same by its judgment as in other cases.

SEC. 5911 (being sec. 23, chap. 76, G. S. 1878). Whenever any action is brought against any corporation, its directors or other superintending officers, or stockholders, according to the provis-
42 ions of this chapter, the court, whenever it appears necessary or proper, may order notice to be published, in such manner as it shall direct, requiring all the creditors of such corporation to exhibit their claims and become parties to the action, within a reasonable time, not less than six months from the first publication of such order, and, in default thereof, to be precluded from all benefit of the judgment which shall be rendered in such action, and from any distribution which shall be made under such judgment.

That during all the times herein mentioned said laws were, and now are, in full force and effect; and said sections 2494 and 2501 are part of chapter 33 of said statutes, and that said bank was organized under said chapter.

That the supreme court of the State of Minnesota has rendered decisions relating to the liability of stockholders in banks organized under the laws of said State of Minnesota and as to the proper method of enforcing such liability and that said decisions are reported in the Minnesota Reports and in the Northwestern Reporter in the following cases, to wit:

Allen *vs.* Walsh, 25 Minn. 543.
Harper *vs.* Carroll, 62 Minn. 152.
Harper *vs.* Carroll, 66 Minn. 487.
Hanson *vs.* Davidson, 76 Northwestern Reporter 254.
Olson *vs.* Cook, 57 Minn. 552.
Danforth *vs.* National Chemical Co., 68 Minn. 308.
Holland *vs.* Duluth I. M. & D. Company, 65 Minn. 324.
First Nat. Bank of Deadwood *vs.* Gustin M. C. M. Co., 42 Minn. 327.
43 Rule *vs.* Omega S. & G. Co., 64 Minn., 326.
Overmire *vs.* Haworth, 48 Minn. 372.

Dodge *vs.* M. P. Roofing Co., 16 Minn. 368 (Gil. 327).
First Nat'l Bank *vs.* Northern Trust Co., 69 Minn. 176.
State *vs.* Bank of New England, 73 N. W. Rept. 153.
American Savings & L. Ass'n *vs.* Farmers' & Merchants' St. Bk., 65 Minn. 139.
Gebhard *vs.* Eastman, 7 Minn. 40 (Gil. 56).
Hencke *vs.* Twomey, 58 Minn. 550.
Dent *vs.* Matteson, 73 Northwestern Rep. 416.
Hantzch *vs.* Massolt, 61 Minn. 361.
In re Martin's Estate, 56 Minn. 420.
Minneapolis Baseball Co. *vs.* City Bank, 66 Minn. 441.

That the liability of stockholders in such banks, and the methods of enforcing the same under said decisions and laws are: That all the stockholders in such banks are liable for all debts of the bank in double the amount of stock held by them respectively in addition to the subscription price of said stock; that the proper method of enforcing such liability is, in the first instance, for a creditor to bring an action at the domicile of the corporation, against the corporation and all of its stockholders, over whom jurisdiction can be obtained, on behalf of all the creditors of such bank who shall come into said action so commenced and that judgment shall be therein entered in favor of each creditor in the amount owing him by said bank, and against each stockholder, over whom the court
44 shall have acquired jurisdiction, in double the amount of stock held by him, but that no more shall be collected therein than is sufficient to satisfy such judgment in favor of said creditors, and that a receiver be appointed in said action to collect said judgment and to distribute the same to said creditors *pro rata* and also to enforce the liability of stockholders residing in jurisdictions other than that in which said suit is brought; that the liability of such stockholders is several and not joint and that judgment against only a part of such stockholders does not have the effect of releasing others against whom no judgment was obtained in such action; that such action is not the exclusive remedy, but if any stockholders were omitted from such original action, because the court could not acquire jurisdiction of them, or for any other cause, the liability could be enforced against such omitted stockholders by proceedings against them in an action ancillary to the original action in any jurisdiction in which they might be found, and where they can be served with process; that the obligation of stockholders is not penal in its nature, but is purely contractual, and contains all the elements of a contract and can be enforced as such, and that an action to enforce such liability is an action on contract; that the judgment in such original action, determining the amount of the corporate debts remaining unpaid, is binding on the stockholders whether parties to the action or not; that the judgment against the corporation is in effect a judgment against the stockholders in their corporate capacity, and the stockholders are represented by the corporation in such action; that the decree in such action is a final and conclusive determination

of the amount for which the stockholders are liable; that the
45 stockholders are so liable for all debts contracted both before and after they become stockholders; that all creditors who do not come into such action when required so to do by order under said section 5911 within the time therein allowed are precluded from all benefit of the judgment, to be rendered, and from any distribution of the proceeds thereunder; that where a person becomes a stockholder in a corporation organized under the laws of a foreign State he contracts with reference to all the laws of the State under which the corporation is organized and that such laws become a part of his contract and that his liability as such stockholder may be enforced by creditors wherever they can obtain jurisdiction of the parties; that in an action to enforce stockholders' liability in a jurisdiction where the corporation is a non-resident corporation, if judgment cannot be obtained against the corporation, such action will be maintained without such judgment; that the double liability of stockholders in all banks imposed by section 2501 is not repugnant to the constitution; that the liability of stockholders is not an asset of the corporation and cannot be enforced by the assignee or receiver of the corporation in insolvency, but is a liability direct to the creditors; that it is not necessary for creditors to procure a judgment against the bank before commencing the suit to enforce the stockholders' liability; that liability of stockholders is a primary and principal one and not as surety for the corporation; that the liability of a stockholder survives his death and is enforceable against his estate whether the corporate indebtedness was incurred before or after his death and whether the corporation became insolvent before or after his death; that he contracts for a liability which is to
46 continue at least until his stock is transferred to another on the books of the company, and that the liability of the estate of a deceased stockholder for corporate debts is not a claim that can be presented to the probate court for allowance, but must be recovered in an action against the stockholders; that shares in such bank are personal property and transferable on the books of the company and every person becoming a stockholder therein shall, in proportion to his interest, succeed to all the rights and be subject to all the liabilities of prior shareholders; that a legatee is liable to an action by a creditor of the testator to recover the value of any legacy received by him and that an executrix is liable to the amount of property of the estate in her hands.

That in the district court, in and for the county of Hennepin, in said State of Minnesota, on or about the month of January, 1894, an action to enforce the liability of stockholders of said bank, under and by virtue of the laws and constitution of the State of Minnesota, was duly instituted by the American Savings and Loan Association, a creditor of said bank, in behalf of all creditors who should come into said action and prove their claims therein and against said bank, and all the stockholders of said bank were named as parties defendant therein; that such proceedings were duly had in said cause under and pursuant to the laws of the State of Minnesota and the decisions of the supreme court of said State; that said court

duly made and filed its findings of fact and conclusions of law, and judgment was duly rendered thereon in said district court on the 28th day of April, 1897, in favor of said plaintiff, The American Savings and Loan Association in the sum of $20,422.23 and
47 in favor of the other creditors of said bank in the sums set opposite their respective names below, to wit:

Chas. Wolsfeld	$1,015.33
C. G. Melquist	301.05
Mrs. H. Adams	4,225.38
John H. Jordan	358.15
C. G. Carr, agent	115.68
Mrs. B. D. Adams	1,093.73
Cassius M. Conrad	102.50
H. Pratt & Co	142.59
Samuel H. Hall	334.14
A. C. Haugan, as city treas. of Minneapolis	1,020.50
Andrew Sundberg	890.40
W. R. Sinks	3,459.71
David Huston	413.59
C. A. Munson	785.25
Kate Rank	1,737.52
Samuel Pratt	1,780.06
State of Minnesota	21,219.98
M. H. Townsend	422.65
Harrison Pratt	1,873.67
Charles G. Van Wert	274.79
J. D. Laddy	814.67
Merchants' Bank of Winona	10,000.00
People's Savings & Loan Association	8,008.39
Guaranty Savings & Loan Association	479.97
American Building & Loan Association	20,422.23
A. E. Leckie	250.00
H. Wehman	2,713.91

together with interest on all of said sums since the 20th day of June, 1893, at the rate of seven per cent. per annum, and
48 against each and all of the resident stockholders of said bank in amounts set opposite their names below, respectively, to wit:

Lannes A. Condit	$400.00
Martin A. Paulson	5,000.00
Lang & Schofield	2,600.00
Century Investment Company	8,600.00
George W. Jenks	3,000.00
Charles H. Chadbourn, Chas. N. Chadbourn, and Rodney W. Chadbourn, partners as C. H. Chadbourn & Sons	1,000.00
Leonard Kimball	1,000.00
Willis A. James	10,400.00
George L. Matchan	11,000.00
Mary F. Schuknecht	1,800.00

Harry E. Pence and John W. See as executors of the last will and testament of John W. Pence, deceased	3,000.00
James A. Tyler	3,000.00
James A. Fagan	10,000.00
Sarah F. Egbert	3,000.00
Mary J. Ellis	3,200.00
Clara A. Loomis	8,000.00
Calista Andrews	8,000.00
James Leck	200.00
Albert Snyder	1,000.00
John H. Van Nest, Robert A. Van Nest and Rachel F. Van Nest as executors of the last will and testament of Hiram Van Nest, deceased	400.00
Robert T. Lang	34,800.00
Nicholas Galles	400.00
William Trenkle	1,000.00

49 and that the judgment was also duly entered against certain other persons as secondarily liable as to a part of said sums, but that all said persons are utterly insolvent and nothing whatever can be collected from any of them except one William E. Steele, who is liable in the sum of $400.00; that the names of such persons are as follows and the several amounts for which they are so liable are set opposite their names below respectively, to wit:

George F. Williamson	$2,000.00
William Harder	2,000.00
George W. Jenks	2,000.00
William E. Steele	400.00
George L. Matchan	10,000.00
Robert T. Lang	12,000.00
J. J. Salfinger	200.00
Lang & Schofield	200.00

and it was therein further adjudged and decreed that the amount of the debts of said bank still due said plaintiff therein and said other creditors of said bank, at the date of said judgment, was the aggregate sum of $106,471.71, and that the amount due said creditors from said bank on said June 20th, 1893, was the aggregate sum of $91,255.84; that of said sum of $106,471.71 due said creditors as aforesaid,

$6,798.00 accrued prior to June 20th, 1892,
13,500.00 accrued prior to October 27th, 1892,
13,500.00 accrued prior to November 2nd, 1892,
27,700.00 accrued prior to January 18th, 1893,
40,320.00 accrued prior to March 8th, 1893,
40,320.00 accrued prior to March 17th, 1893,
42,330.00 accrued prior to April 15th, 1893,
46,240.00 accrued prior to April 27th, 1893,
50 46,410.00 accrued prior to May 4th, 1893,
46,410.00 accrued prior to May 12th, 1893, and
49,267.00 accrued prior to June 15th, 1893,

and it was further found and adjudged therein that the assets of said bank were totally inadequate to pay its debts in a sum exceeding $100,000.

That of said judgment debtors composition settlements have been made with the following by said receiver under orders of said court and the judgments as to them have been discharged, to wit:

Leonard Kimball,

Harry E. Pence and John W. See as executors of the last will and testament of John W. See, deceased.

James A. Tyler,

Calista Andrews,

John H. Van Nest, Robert A. Van Nest, and Rachel F. Van Nest as executors of the last will and testament of Hiram Van Nest, deceased.

Mary F. Schuknecht,

James A. Fagan,

James Leck.

That the sums received in said settlements are included in said sum of $8,224.85 below recited as the sum received and collected by said receiver, and that none of said judgment debtors whose liabilities were compromised were solvent, at the time of such settlements, excepting said Harry E. Pence and John W. See, as executors, as aforesaid, and John H. Van Nest, Robert A. Van Nest and Rachel F. Van Nest, as executors, as aforesaid, but that the largest sums that could be obtained in any case from the persons and par-
51 ties so settled with were collected and such compromises were made, because said judgments against them were uncollectable.

That pursuant to the provisions of section 5911 above recited an order was duly made July 2nd, 1894 and duly published and entered in said action requiring all creditors of said bank to intervene therein and file their complaints with the clerk of the district court aforesaid, within six months from the publication of said order, and that any and all creditors of said bank who should fail to file their claims pursuant to said order should be forever debarred and precluded from participating in the proceeds of said litigation; that the time to so intervene in said cause expired long since on or about January 1895 and that the only creditors of said bank who came into said action are those hereinbefore set out, and that they are the only persons and parties holding claims against the stockholders of said bank; that by the terms of said judgment it was provided therein as follows to wit:

That the plaintiff is entitled to the appointment of a receiver herein, and upon an informal application made by the plaintiff to this court, either before or after entry of judgment herein, a formal order will be made herein appointing A. C. Finney, Esq., receiver herein, for the purpose of collecting and enforcing the respective liabilities of said defendant stockholders, and that by such order he be authorized and empowered to proceed against those of the defendant stockholders residing in other jurisdictions, in such other jurisdictions, for the purpose of enforcing the liabilities of such

stockholders, and with full power and authority to distribute the proceeds of this action among the parties entitled thereto
52 after final paying in full out of said proceeds the costs and expenses already incurred and the attorneys' fees of plaintiff herein, and all future costs and disbursements, with such compensation and attorneys' fees as may be allowed hereafter by the court.

That pursuant to said judgment an order was on the 20th day of April 1897 duly made and entered in said cause appointing said A. C. Finney such receiver with the powers and duties in said judgment and said order recited; a true copy of said order is hereto attached marked Exhibit "A" and hereby made a part of this complaint; that said Finney thereupon duly qualified as such receiver and proceeded to collect such judgment and has collected therein and from non-resident stockholders against whom no judgment was obtained, the sum of $8,224.85; that execution has issued on all of said judgments so uncollected and every effort has been made to collect the same; that the judgments so uncollected are uncollectable and of no value whatever; that the total amount due the said creditors of said bank, at the time of the entry of said judgment, and for which amount said judgment was entered, was the sum of $106,471.71; that there now remains due the said creditors of said bank more than $100,000, and the total sum now in said receiver's hands to be applied toward the payment of said judgment will not exceed the sum of $1,000.00; that stockholders Calista Andrews and Calista Andrews as guardian of Aimee Andrews, J. E. Flint, F. H. Daniels and R. E. Weller, who were non-residents of said State of Minnesota and not within the jurisdiction of said court and against whom no judgment was entered have compromised and settled their liabilities as such stockholders
53 under the orders of said court; that it is and will be impossible to collect from stockholders of said bank the further sum of $5,275.15, and the sum that can be collected in the aggregate will not exceed $9,000.00 aside from the liability of defendant Guy, so that the total sum that can be realized will be less than $13,500.00; that there are no parties or persons in the State of Wisconsin, other than the defendant, who are liable as stockholders in said bank; that during the times herein mentioned Calista Andrews, Aimee Andrews, Charles V. Guy, Mary A. Guy, E. H. Daniels, J. E. Flint, H. S. Miller, N. L. Dunbar, R. E. Weller, Mrs. J. W. Adams and F. H. Schofield were and each of them were non-residents of the State of Minnesota and have no property therein.

That the defendant, Mary A. Guy, is liable to creditors of said bank, the plaintiffs herein, in the sum of $3,800.00 with interest on the same since April 28th, 1897 at the rate of seven per cent. per annum, and that this action is brought to enforce said liability.

Wherefore plaintiffs pray judgment:

1. That Mary A. Guy pay plaintiffs $3,800.00 with interest thereon since April 28, 1897 at the rate of seven per cent. per annum with costs and disbursements and the plaintiffs have execution therefor.

2. That A. C. Finney be appointed receiver herein to collect said

amount and to distribute the same *pro rata* among the other plaintiffs.

3. That this court make such orders and enter such further judgments herein as may be necessary to enforce such liability of defendant for the benefit of plaintiffs.

54 4. That this court give such other and further relief as the court can grant in the premises.

FRED W. REED AND
F. M. WHITE,
Plaintiff's Attorneys.

"EXHIBIT A."

STATE OF MINNESOTA, }
County of Hennepin, Fourth Judicial District. }

District Court.

AMERICAN SAVINGS AND LOAN ASSOCIATION
vs.
FARMERS' AND MECHANICS' STATE BANK, a Corporation; Northern Trust Company (Formerly the St. Paul and Minneapolis Trust Company), a Corporation, as Assignee of said Defendant Bank; Lannes A. Condit, Charles V. Guy, Mary Guy, R. E. Weller, Martin A. Paulson, Willis A. James, J. E. Flint; Robert T. Lang and Morton F. Schofield, Partners as Lang & Schofield; Mrs. J. W. Adams, George L. Matchan, Harry E. Pence, William Monypenny, and John W. See, as Executors of the Estate of John W. Pence, Deceased; Mary F. Schuknecht, F. H. Daniels, James A. Tyler, James A. Fagan, F. H. Simpson, Sarah E. Egbert, Clara A. Loomis, Mary J. Ellis, Calista
55 Andrews, F. H. Schofield, James Leck, A. Snyder, John H. Van Nest, Robert A. Van Nest, and Rachel E. Van Nest, Deceased; George F. Williamson, Century Investment Company, a Corporation; Northern Trust Company, as Assignee of said Century Investment Company; William E. Steele, Aimee Andrews, a Minor; Calista Andrews, as Guardian of the Estate of said Aimee Andrews; Robert T. Lang, George W. Jenks, Morton F. Schofield, N. L. Dunbar, a Minor; Charles V. Guy, as Guardian of the Estate of said N. L. Dunbar; N. Galles, J. J. Salfinger, H. S. Miller, as Guardian of the Estate of said N. L. Dunbar; Charles H. Chadbourne and Rodney W. Chadbourne, Partners as C. H. Chadbourne & Sons; L. Kimball, William Trenkle, and William Harder, Defendants.

It having been made to appear to the court, that it is necessary that a receiver be appointed in the above-entitled action, for the purpose of collecting and enforcing the liabilities of the different defendant stockholders in said action, and for the purpose of instituting actions against certain of said defendant stockholders residing outside of the jurisdiction of this court, in such other jurisdictions, for the purpose of enforcing the liability of such non-resident

stockholders, as well as for the purpose of distributing the proceeds of all the liabilities of all the stockholders of said bank, be-
56 tween the parties who have joined plaintiff and have become parties plaintiff in said action, and whose claims have been allowed by the findings of the court herein:

And it having been made to appear further to the court that Albert C. Finney is a proper and competent person to act as such receiver:

Now, therefore, upon application of Fred W. Reed, Esq., as attorney for said plaintiff herein, made in accordance with findings and conclusions of law, made and filed herein, upon the trial of said action, issue having been joined therein:

It is hereby ordered and decreed, that Albert C. Finney, Esq., be and he hereby is appointed receiver in the above-entitled action, and that, upon giving a bond in the sum of five thousand ($5,000) dollars conditioned upon the faithful discharge upon his part of the duties of said office or receiver in this action, he be authorized and directed, with all reasonable speed to enforce the liabilities of the several defendants mentioned in the conclusions of law and order for judgment filed in this action, and with all reasonable speed and by all legal and proper means, to collect and enforce the payment of the judgment against said several defendant stockholders to be rendered and entered in said action, in accordance with the law and terms of said judgment, as far as the same is collectable and enforcible by any and all remedies and means known to the law; or if he shall so advise under the advice and direction of the court, to compromise and settle the same, or any part of the same; and that he be further authorized and directed as such receiver in this action, to commence an action or actions, in any proper court in any
57 other jurisdiction in which any of the above-named defendant stockholders reside, who are non-residents of this State, for the purpose of enforcing, in such jurisdiction, against any of the said defendant stockholders residing therein, the liability of said parties respectively as stockholders in said Farmers' and Merchants' State bank to double the amount of stock held by said parties respectively in said bank, and prosecute said actions to their final determination, or until the same are compromised and settled if he shall deem it advisable and to the best interests of the plaintiff and the creditors who have joined as parties plaintiff in this action, to compromise and settle said causes of action, or any of them for any amount less than the full amount of said liability:

And he is further, as such receiver, authorized and directed to distribute any and all of the proceeds coming into his hands by virtue of his office as such receiver, *pro rata* among the plaintiff and the other parties who have joined the plaintiff in said suit, and have exhibited their claims in this action, and whose claims have by the findings in this action been allowed by the court, in proportion to their respective claims as allowed by the court in this action, and as indicated by the court in said findings and conclusions, after having, however, first paid out of the first money received by him as such receiver, to the plaintiff's attorney herein, any and all sums which may at any time be allowed by the court to said attorney for

his services herein in conducting and prosecuting said action to final judgment, and on appeal to the Supreme Court, if any appeal shall be taken, as well as all other costs and disbursements which have been or may hereafter be incurred by plaintiff in this action in the prosecution of the same, as well as any and all expenses that
58 may be hereafter incurred by said receiver in the execution of his trust, including all proper attorneys' and counsel's fees, for services performed for said receiver in the enforcement of any and all of said liabilities, and also including such compensation as shall hereafter be by the court allowed said receiver for his services as such; it being the intention that all the different items of costs of said receivership, as well as attorneys' fees, and costs, and disbursements incurred or hereafter to be incurred in this action, shall be paid in full out of the moneys received and collected by the receiver in this action, before the proceeds of this action be in whole or in part distributed among the parties plaintiff entitled to such distribution.

And it is further ordered that said Albert C. Finney be and hereby is directed and required as such receiver to keep a full and accurate account of all his acts and doings as such receiver herein, and to report the same to the court, from time to time, as he may be hereafter directed by the order of the court:

And the said receiver is hereby authorized and empowered to employ such counsel and attorneys as he may deem necessary to manage in his behalf such actions, suits or other affairs as have arisen or may arise in the execution of his said trust and in the discharge of his duties as such receiver, and to advise such receiver in relation to the performance of his duties.

Dated April 20th, 1897.

By the court,

DAVID F. SIMPSON,
District Judge.

59 STATE OF MINNESOTA, } ss:
County of Hennepin, }

A. C. Finney being first duly sworn deposes and says that he, as receiver, is one of the plaintiffs in the foregoing and above-entitled action; that the several parties plaintiff therein, including this affiant, are united in interest and pleading together therein; that affiant has read the foregoing complaint and knows the contents thereof; that said complaint is true to affiant's own knowledge, except as to matters therein stated on information and belief, and as to those matters that he believes it to be true.

A. C. FINNEY.

Subscribed and sworn to before me this 27th day of March, A. D. 1899.

[SEAL.] REUBEN TOMLINSON,
Notary Public, Hennepin County, Minnesota.

(Endorsements:) Pierce county, Wis. Filed March 31, 1899. L. G. Spinney, clerk circuit court. (Original.) Circuit court, ——

county. A. C. Finney as rec. *et al.*, plaintiffs *vs.* Mary A. Guy *et al.*, defendants. Summons and complaint. Fred. W. Reed and F. M. White, plaintiff's att'ys. Filed July 29, 1899. Clarence Kellogg, clerk of supreme court, Wis. Filed June 7, 1901. Clarence Kellogg, clerk of supreme court, Wis.

60 (*Demurrer.*)

STATE OF WISCONSIN:

In Circuit Court for Pierce County.

A. C. FINNEY, as Receiver; AMERICAN SAVINGS AND LOAN ASSOCIATION; W. D. Hale, as Receiver of said American Savings and Loan Association; Charles Wolsfeld, C. G. Melquist, Mrs. H. Adams, John H. Jordan; C. G. Carr, Agent; Mrs. D. B. Adams, Cassius M. Conrad, Samuel H. Hall, C. S. Hulbert, as City Treasurer of the City of Minneapolis; Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles G. Van Wert, J. D. Laddy, Merchants' Bank of Winona, People's Savings and Loan Association, A. E. Lacke, H. Wehman, and Harrison Pratt and Samuel M. Pratt, Copartners as H. Pratt & Co., Plaintiffs,

vs.

MARY A. GUY and MARY A. GUY as Executrix and Sole Residuary Legatee under the Will of Charles V. Guy, Deceased, Defendants.

The defendant above named, Mary A. Guy, by John W. Bashford, her attorney, separately demurs to the complaint of the plaintiff in this action and specifies as ground of objection thereto that it appears upon the face of the complaint:

1st. That the circuit court of Pierce county have no jurisdiction of the subject-matter of said action.

2nd. That the plaintiffs have not the legal capacity to sue.

3rd. That there is a defect in parties plaintiff in this that it appears upon the face of the complaint that none of the plaintiffs except A. C. Finney as receiver, has any interest in the subject-matter of said action.

4th. That there is a defect in parties defendant in this that Mary A. Guy as executrix and sole legatee under the will of Charles V. Guy, deceased, is not a necessary or proper party defendant.

5th. That several causes of action have been improperly united.

6th. That this action was not commenced within the time limited by law. By section 3844 of the Revised Statutes of the State
61 of Wisconsin, and by section 3274 of the Revised Statutes of the State of Wisconsin.

7th. That the complaint does not state facts sufficient to constitute a caus. of action.

JOHN W. BASHFORD,
Att'y for Defendant Mary A. Guy.

(Endorsements:) Pierce county, Wis. Filed July 26, 1899. L. G. Spinney, clerk circuit court. State of Wisconsin, in circuit court for Pierce county. A. C. Finney *et al.*, plaintiffs *vs.* Mary A. Guy, *et al.*, defendants. Service of a copy of the within demurrer admitted this 17th day of April, 1899. Fred. W. Reed and F. M. White, att'ys for pl'ffs. John W. Bashford, att'y for defendants, Hudson, Wisconsin. Filed July 29, 1899. Clarence Kellogg, clerk of supreme court, Wis. Filed June 7, 1901. Clarence Kellogg, clerk of supreme court, Wis. Copy mailed to F. M. White, River Falls, April 15, 1899.

62 (*Demurrer.*)

STATE OF WISCONSIN:

In Circuit Court for Pierce County.

A. C. FINNEY, as Receiver; AMERICAN SAVINGS AND LOAN ASSOCIATION; W. D. Hale, as Receiver of said American Savings and Loan Association; Charles Wolsfeld, C. G. Melquist, Mrs. H. Adams, John H. Jordan; C. G. Carr, Agent; Mrs. D. B. Adams, Cassius M. Conrad, Samuel H. Hall; C. S. Hulbert, as City Treasurer of the City of Minneapolis; Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles G. Van Wert, J. D. Laddy, Merchants' Bank of Winona, People's Savings and Loan Association, A. E. Lacke, H. Wehman, and Harrison Pratt and Samuel M. Pratt, Copartners as H. Pratt & Co., Plaintiffs,

vs.

MARY A. GUY and MARY A. GUY as Executrix and Sole Residuary Legatee under the Will of Charles V. Guy, Deceased, Defendants.

The defendant above named, Mary A. Guy, as executrix and sole legatee under the will of Charles V. Guy, deceased, by John W. Bashford, her attorney, separately demurs to the complaint of the plaintiff in this action and specifies as ground of objection thereto that it appears upon the face of the complaint:

1st. That the circuit court of Pierce county has no jurisdiction of the subject-matter of said action.

2nd. That the plaintiffs have not the legal capacity to sue.

3rd. That there is a defect in parties plaintiff in this that it appears upon the face of the complaint that none of the plaintiffs except A. C. Finney as receiver, has any interest in the subject-matter of said action.

4th. That there is a defect in parties defendant in this that Mary A. Guy is not a necessary or proper party defendant.

5th. That several causes of action have been improperly united.

6th. That this action was not commenced within the time limited by law. By section 3844 of the Revised Statutes of the State
63 of Wisconsin, and by section 3274 of the Revised Statutes of the State of Wisconsin.

7th. That the complaint does not state facts sufficient to constitute a cause of action.

JOHN W. BASHFORD,
Att'y for Defendant Mary A. Guy as Executrix and Sole Residuary Legatee under the Will of Charles V. Guy, Deceased.

(Endorsements:) Pierce county, Wis. Filed July 26, 1899. L. G. Spinney, clerk circuit court. State of Wisconsin, in circuit court for Pierce county. A. C. Finney *et al.*, plaintiffs *vs.* Mary A. Guy *et al.*, defendants. Service of a copy of the within demurrer admitted this 15th day of April, 1899. Fred. W. Reed and F. M. White, att'ys for pl'ffs. John W. Bashford, att'y for defendants, Hudson, Wisconsin. Filed July 29, 1899. Clarence Kellogg, clerk of supreme court, Wis. Filed June 7, 1901. Clarence Kellogg, clerk of supreme court, Wis.

64 (*Order of Court Overruling Demurrer.*)

Pierce county, Wis. Filed July 10, 1899. L. G. Spinney, clerk circuit court.

STATE OF WISCONSIN, }
County of Pierce. }

In Circuit Court.

At a general term of said circuit court, begun and held in and for said county at the court-house, in the village of Ellsworth, said county, commencing May 8th, 1899, to wit, May 22d, 1899, Hon. A. J. Vinje, judge, presiding.

A. C. FINNEY, as Receiver; AMERICAN SAVINGS AND LOAN ASSOCIATION; W. D. Hale, as Receiver of said American Savings and Loan Association; Charles Wolsfeld, C. G. Melquist, Mrs. H. Adams, John H. Jordan; C. G. Carr, Agent; Mrs. B. D. Adams, Cassius M. Conrad, Samuel H. Hall; C. S. Hulbert, as City Treasurer of the City of Minneapolis; Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles G. Van Wert, J. D. Laddy, Merchants' Bank of Winona, People's Savings and Loan Association, A. F. Leckie, H. Wehman, and Harrison Pratt and Samuel Pratt, Copartners as H. Pratt & Co., Plaintiffs,

vs.

MARY A. GUY and MARY A. GUY as Executrix and Sole Residuary Legatee under the Will of Charles V. Guy, Deceased, Defendants.

The above-entitled cause having come on to be heard in its regular order on the calendar before the court, upon a demurrer interposed by defendant to the complaint herein, Messrs. F. M. White and Fred. W. Reed appeared for the plaintiffs and John W. Bashford,

Esq., for the defendant. The court having heard the argument and all matters produced on behalf of both parties and having duly considered the same:

It is ordered, that said demurrer be and the same is hereby overruled in all things and that defendant have leave to answer, within twenty days after service of notice of the entry of this order and upon payment of ten dollars costs.

Dated, June 30th, 1899.

By the court,

A. J. VINJE, *Judge.*

65 (Endorsements:) State of Wisconsin, county of Pierce, circuit court. A. C. Finney *et al.*, plaintiffs *v.* Mary A. Guy, defendant. Order overruling demurrer. Recorded in Order Book F, page 188. F. M. White, Fred. W. Reed, att'ys for plaintiffs, New York Life building, Minneapolis, Minn. Filed July 29, 1899. Clarence Kellogg, clerk of supreme court, Wis. Filed June 7, 1901. Clarence Kellogg, clerk of supreme court, Wis.

66 (*Exception to Order.*)

STATE OF WISCONSIN:

In Circuit Court for Pierce County.

A. C. FINNEY, as Receiver; AMERICAN SAVINGS AND LOAN Association; W. D. Hale, as Receiver of said American Savings and Loan Association; Charles Wolsfeld, C. G. Melquist, Mrs. H. Adams, John H. Jordan; C. G. Carr, Agent; Mrs. B. D. Adams, Cassius M. Conrad, Samuel H. Hall; C. S. Hulbert, as City Treasurer of the City of Minneapolis; Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles Van Wert, J. D. Laddy, Merchants' Bank of Winona, People's Savings and Loan Association, A. F. Leckie, H. Wehman, and Harrison Pratt and Samuel Pratt, Copartners as H. Pratt & Co., Plaintiffs,

vs.

MARY A. GUY and MARY A. GUY as Executrix and Sole Residuary Legatee under the Will of Charles V. Guy, Deceased, Defendants.

The defendants in this action except to the order made by the court herein on the 30th day of June, 1899, and filed with the clerk of the circuit court of Pierce county on the 1st day of July, 1899, which said order and notice of entry of same was served on me on July 5th, 1899, to the whole of said order and to each and every part thereof.

JOHN W. BASHFORD,
Attorney for Defendants.

(Endorsements:) Pierce county, Wis. Filed July 10, 1899. L. G. Spinney, clerk circuit court. State of Wisconsin, in circuit court for Pierce county. A. C. Finney *et al.*, plaintiffs *vs.* Mary A. Guy *et al.*, defendants. John W. Bashford, att'y for defendants, Hudson, Wisconsin. Filed July 29, 1899. Clarence Kellogg, clerk of supreme court, Wis. Filed June 7, 1901. Clarence Kellogg, clerk of supreme court, Wis.

67 (*Notice of Appeal.*)

STATE OF WISCONSIN:

In Circuit Court for Pierce County.

A. C. FINNEY, as Receiver; AMERICAN SAVINGS AND LOAN ASSOCIATION; W. D. Hale, as Receiver of said American Savings and Loan Association; Charles Wolsfeld, C. G. Melquist, Mrs. H. Adams, John H. Jordan; C. G. Carr, Agent; Mrs. B. D. Adams, Cassius M. Conrad, Samuel H. Hall; C. S. Hulbert, as City Treasurer of the City of Minneapolis; Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles G. Van Wert, J. D. Laddy, Merchants' Bank of Winona, People's Savings and Loan Association, A. F. Leckie, H. Wehman, and Harrison Pratt and Samuel Pratt, Copartners as H. Pratt & Co., Plaintiffs,

vs.

MARY A. GUY and MARY A. GUY as Executrix and Sole Residuary Legatee under the Will of Charles V. Guy, Deceased, Defendants.

Please take notice that Mary A. Guy and Mary A. Guy as executrix and sole residuary legatee under the will of Charles V. Guy, deceased defendant and appellant in this action, hereby appeals to the supreme court of the State of Wisconsin, from the whole of the order made in this action by the circuit court for Pierce county aforesaid, which order was entered of record in said circuit court on the 1st day of July, A. D. 1899.

A copy of the said order appealed from is hereunto annexed.

JOHN W. BASHFORD,
Defendant's Attorney.

To F. M. White, Esq., Fred. W. Reed, Esq., plaintiffs' attorneys, and to L. G. Spinney, clerk of the circuit court for Pierce county, Wisconsin.

Dated the 25th day of July, A. D. 1899.

(Endorsements:) Pierce county, Wis. Filed July 26, 1899. L. G. Spinney, clerk circuit court. Filed July 29, 1899. Clarence Kellogg, clerk of supreme court, Wis. Filed June 7, 1901. Clarence Kellogg, clerk of supreme court, Wis.

68 STATE OF WISCONSIN, }
County of Pierce. }

In Circuit Court.

At a general term of said court, begun and held in and for said county at the court-house, in the village of Ellsworth, said county, commencing May 8th, 1899, to wit, May 22d, 1899, Hon. A. J. Vinje, judge, presiding.

A. C. FINNEY, as Receiver; AMERICAN SAVINGS AND LOAN ASSOCIATION; W. D. Hale, as Receiver of said American Savings and Loan Association, Charles Wolsfeld, C. G. Melquist, Mrs. H. Adams, John H. Jordan; C. G. Carr, Agent; Mrs. B. D. Adams, Cassius M. Conrad, Samuel H. Hall, C. S. Hulbert, as City Treasurer of the City of Minneapolis; Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles G. Van Wert, J. D. Laddy, Merchants' Bank of Winona, People's Savings and Loan Association, A. F. Leckie, H. Wehman, and Harrison Pratt and Samuel Pratt, Copartners as H. Pratt & Co., Plaintiffs,

vs.

MARY A. GUY and MARY A. GUY as Executrix and Sole Residuary Legatee under the Will of Charles V. Guy, Deceased, Defendants.

The above-entitled cause having come on to be heard in its regular order on the calendar before the court upon a demurrer interposed by defendant to the complaint herein, Messrs. F. M. White and Fred. W. Reed appeared for the plaintiffs and John W. Bashford, Esq. for the defendant. The court having heard the argument and all matters produced on behalf of both parties and having duly considered the same:

It is ordered, that said demurrer be and the same is hereby overruled in all things and that defendant have leave to answer, within twenty days after service of notice of the entry of this order and upon payment of ten dollars costs.

Dated, June 30th, 1899.

By the court,

(Signed) A. J. VINJE, *Judge.*

69 (Endorsements:) Order recorded in Order Book F, page 188. Pierce county, Wis. Filed July 26, 1999. L. G. Spinney, clerk circuit court. Original. State of Wisconsin, in circuit court, for Pierce county. A. C. Finney *et al.*, plaintiffs *v.* Mary A. Guy *et al.*, defendants. Notice of appeal to supreme court. Service of a copy of the within notice of appeal admitted this 25th day of July, 1899. F. M. White & Fred W. Reed, att'ys for plaintiff and repondent. Service of a copy of the within notice admitted this 26th day of July, 1899. L. G. Spinney, clerk. Filed July 29, 1899, Clarence Kellogg, clerk of supreme court, Wis. Filed June 7, 1901. Clarence Kellogg, clerk of supreme court, Wis.

70 (*Undertaking on Appeal.*)

STATE OF WISCONSIN:

In Circuit Court for Pierce County.

A. C. FINNEY, as Receiver; AMERICAN SAVINGS AND LOAN ASSOCIATION; W. D. Hale, as Receiver of said American Savings and Loan Association; Charles Wolsfeld, C. G. Melquist, Mrs. H. Adams, John H. Jordan, C. G. Carr, Agent; Mrs. B. D. Adams, Cassius M. Conrad, Samuel H. Hall, C. S. Hulbert, as City Treasurer of the City of Minneapolis; Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles G. Van Wert, J. D. Laddy, Merchants' Bank of Winona, People's Savings and Loan Association, A. F. Leckie, H. Wehman, and Harrison Pratt and Samuel Pratt, Copartners as H. Pratt & Co., Plaintiffs,

vs.

MARY A. GUY and MARY A. GUY as Executrix and Sole Residuary Legatee under the Will of Charles V. Guy, Deceased, Defendants.

Whereas on the 30th day of June, A. D. 1899, the circuit court for Pierce county, Wisconsin, made an order that the demurrer of the appellants be, and the same is hereby overruled in all things, and that the appellants have leave to answer within twenty days, after the service of notice of the entry of said order upon the payment of ten dollars cost-, and

Whereas said order was entered in the office of the clerk of the circuit court for Pierce county, on the first day of July, 1899, and a notice of the entry of said order was served upon appellants on the fifth day of July, 1899. And the above-named appellants, feeling aggrieved thereby, intend to appeal therefrom to the supreme court of the State of Wisconsin;

Now therefore, we, Mary A. Guy, and Mary A. Guy as executrix and sole residuary legatee under the will of Charles V. Guy, deceased, of River Falls, in the county of Pierce and State of Wisconsin, and Roderick McGregor and G. I. ApRoberts, of River Falls, in the county of Pierce and State of Wisconsin, do hereby, pursuant to the statute in such case made and provided, undertake that
71 the said appellants will pay all costs and damages which may be awarded against said appellants on said appeal, not exceeding two hundred and fifty dollars; and do also undertake that if the said judgment so appealed from, or any part thereof, be affirmed, the said appellants will pay the amount directed to be paid by the said judgment, or the part of such amount as to which the said judgment shall be affirmed, if it be affirmed only in part, and all damages which shall be awarded against said appellants on the said appeal.

MARY A. GUY.
RODERICK McGREGOR.
G. I. APROBERTS.

STATE OF WISCONSIN, } ss:
Pierce County, }

Roderick McGregor, being duly sworn, says he is one of the subscribers to the foregoing undertaking; that he is a resident of the State of Wisconsin, and is worth the sum of five hundred dollars over and above all his debts and liabilities, in property within the State of Wisconsin, not by law exempt from execution.

RODERICK McGREGOR.

Subscribed and sworn to before me, this 24th day of July, A. D. 1899.

WILLIAM H. SANDERSON,
Notary Public.

STATE OF WISCONSIN, } ss:
Pierce County, }

G. I. ApRoberts, being duly sworn, says he is one of the subscribers to the foregoing undertaking; that he is a resident of the State of Wisconsin, and is worth the sum of five hundred dollars over and above all his debts and liabilities, in property within the State of Wisconsin, not by law exempt from execution.

G. I. APROBERTS.

Subscribed and sworn to before me, this 24th day of July, A. D. 1899.

WILLIAM H. SANDERSON,
Notary Public.

72 (Endorsements:) Pierce county, Wis. Filed July 26, 1899. L. G. Spinney, clerk circuit court. Original. State of Wisconsin, in circuit court for Pierce county. A. C. Finney, as receiver, *et al.*, plaintiffs *v.* Mary A. Guy *et al.*, defendants. Undertaking on appeal. Service of a copy of the within undertaking on appeal admitted this 25th day of July, 1899. Fred W. Reed & F. M. White, att'ys for plaintiffs. John W. Bashford, att'y for appellants, Hudson, Wisconsin. Service of a copy of the within undertaking admitted this 26th day of July, 1899. L. G. Spinney, clerk. Filed July 29, 1899. Clarence Kellogg, clerk of supreme court, Wis. Filed June 7, 1901. Clarence Kellogg, clerk of supreme court, Wis.

73 (*Clerk's Certificate.*)

STATE OF WISCONSIN:

In Circuit Court for Pierce County.

A. C. FINNEY, as Receiver; AMERICAN SAVINGS AND LOAN Association; W. D. Hale, as Receiver of said American Savings and Loan Association; Charles Wolsfield, C. G. Melquist, Mrs. H. Adams, John H. Jordan; C. G. Carr, Agent; Mrs. B. D. Adams, Cassius M. Conrad, Samuel H. Hall; C. S. Hulbert, as City Treasurer of the City of Minneapolis; Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles G. Van Wert, J. D. Laddy, Merchants' Bank of Winona, People's Savings and Loan Association, Guaranty Savings and Loan Association, A. F. Leckie, H. Wehman, and Harrison Pratt and Samuel M. Pratt, Copartners as H. Pratt & Co., Plaintiffs,

vs.

MARY A. GUY and MARY A. GUY as Executrix and Sole Residuary Legatee under the Will of Charles V. Guy, Deceased, Defendants.

STATE OF WISCONSIN, } ss:
Pierce County, }

I, L. G. Spinney, clerk of the circuit court for Pierce county, do hereby certify that the foregoing constitutes the entire record in the above-entitled action, and are all the necessary original papers on file and of record in my office in said action, and that the same are transmitted to the supreme court of said State of Wisconsin pursuant to a notice of appeal and undertaking hereto attached, and which have been duly served upon me, pursuant to the statute in such case made and provided.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, this 26th day of July, A. D. 1899.

[SEAL.] L. G. SPINNEY, *Clerk.*

(Endorsements:) Pierce county, Wis. Filed April 27, 1900. L. G. Spinney, clerk circuit court. A. C. Finney as rec. *et al. v.* Mary H. Guy, executrix *et al.* Filed July 29, 1899. Clarence Kellogg, clerk of supreme court, Wis. Filed June 7, 1901. Clarence Kellogg, clerk of supreme court, Wis.

74 (*Remittitur.*)

Be it remembered, that at a term of the supreme court of the State of Wisconsin, begun and held at the capitol, in Madison, the seat of government of said State, on the second Tuesday, to wit, on the ninth day of January, A. D. 1900, on the twentieth day of the term, to wit: on the 20th day of March, A. D. 1900. Present, John B. Cassoday,

chief justice, John B. Winslow, R. D. Marshall, Charles V. Bardeen and Joshua E. Dodge, justices of said court, the following proceedings were had, *inter alia*, to wit:

A. C. FINNEY, as Receiver, &c. ET AL., Respondents, *vs.* MARY A. GUY ET AL., Appellants. } Appeal from Circuit Court, Pierce County, State of Wisconsin.

This cause came on to be heard on appeal from the order of the circuit court of Pierce county, and was argued by counsel. On consideration whereof: it is now here ordered and adjudged by this court, that the order of the circuit court of Pierce county, entered herein on the first day of July, A. D. 1899, be and the same is hereby reversed, with costs against the said respondents taxed at the sum of ninety-six and $\frac{25}{100}$ dollars ($96.25).

And that this cause be and the same is hereby remanded to the said circuit court, for such further proceedings therein as may be according to law.

Justice Dodge dissents.

STATE OF WISCONSIN, *Supreme Court,* } *ss:*

I, Clarence Kellogg, clerk of the supreme court of the State of Wisconsin, do hereby certify that I have compared the above and foregoing with the original order and judgment of the court in the above-entitled cause, and that it is a correct transcript therefrom, and of the whole thereof.

75 In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Madison, this twenty-fifth day of April, A. D. 1900.

[SEAL.] CLARENCE KELLOGG,
Clerk of the Supreme Court of the State of Wisconsin.

(Endorsements:) State of Wisconsin. Supreme court. A. C. Finney, as receiver, *et al.*, respondents, against Mary A. Guy, *et al.*, appellants. Remittitur. Recorded in Order Book F, page 256. Pierce county, Wis. Filed April 27, 1900. L. G. Spinney, clerk circuit court. Filed June 7, 1901. Clarence Kellogg, clerk of supreme court, Wis.

76 (*Opinion of Supreme Court.*)

A. C. FINNEY, as Receiver, &c., ET AL., Respondents,
vs.
MARY A. GUY ET AL., Appellants.

Appeal from the circuit court for Pierce county.

Action to enforce the statutory liability of a stockholder of a bank to creditors under the laws of Minnesota.

The complaint stated, in effect, as follows: The Farmers' and Merchants' State bank, a banking corporation organized under the laws of and located in the State of Minnesota and there engaged in business from June 6, 1888, till June 20, 1893, on the last-named date, pursuant to the laws of such State, made an assignment for the benefit of its creditors, which assignment was fully perfected and such proceedings were thereafter had in administering it that the assets of the bank were converted into money and the net proceeds thereof distributed to the creditors, without paying them in full, by about $80,000. The capital stock of the bank was $75,000. Each individual stockholder was named in the complaint, with the amount of stock owned by him, defendant, Mary A. Guy, being one of such stockholders and said to be the owner of nineteen shares of the par value of $100 each. She resides in Pierce county, Wis. It was further alleged in the complaint, in effect, that by the laws of the State of Minnesota every person, on becoming a stockholder of a bank organized under its laws, in proportion to his interest, succeeds to the rights and becomes subject to the liabilities of his predecessor, and that the individual liabilities of stockholders to its creditors extends to double the amount of the stock and continues, as to any stockholder who may sell or transfer his stock, till the expiration of one year after such sale or transfer; that a creditor of a bank, desiring to enforce the individual
77 liability of its stockholders for the payment of his claim, may file his complaint, in an action instituted for that purpose, in any court in Minnesota having jurisdiction of the subject, and that thereupon such court is required to proceed "as in other cases and when necessary to cause an account to be taken of the property and debts due to and from the corporation, and appoint one or more receivers;" that there is a provision of statute, however, that in certain circumstances therein named the court may proceed to enforce the stockholders' liability without appointing a receiver and by its judgment as in other cases. The complaint further stated, in effect, that the statutes of Minnesota provide that in a creditor's action to enforce the statutory liabilities of bank stockholders the court may require all the creditors of the bank to become parties to the action and exhibit their claims within a reasonable time fixed by the court, not less than six months from the date of the first publication of the order to that effect, or be barred from all the benefits of such liabilities. The complaint further

stated, in effect, that according to the judicial system established in Minnesota by its highest judicial tribunal (citing the various cases that have been decided by such tribunal) the liability of stockholders of a bank organized under the laws of that State, to its creditors, must be enforced by first instituting an action, at the domicil of the corporation, against the corporation and all of its stockholders within the jurisdiction of the court, on behalf of all creditors of such corporation who shall participate in the action; that the proper method of proceeding in the action is to cause a judgment to be rendered in favor of each creditor for the amount owing him from the bank, and a judgment against each stockholder over whom the court shall have been able to obtain jurisdiction for the maximum amount of his liability, and to enforce
the judgment as to such liabilities *pro rata*, as far as prac-
78 ticable, in order to realize a sufficient amount of money to
pay all indebtedness of the bank established in the action to the extent of the full amount of such liabilities, and to cause a receiver to be appointed in the action to collect the judgments and distribute the proceeds and to enforce the liabilities of other stockholders residing in jurisdictions outside of that in which the judgment is rendered. Further, it was stated to be the law of Minnesota, as held by its highest judicial tribunal, and as indicated in the adjudications mentioned, that the statutory liability of stockholders is several and that a judgment against a part of them does not release others against whom no judgment is or can be rendered in the action; that if any of the stockholders are omitted from the first action because the court cannot acquire jurisdiction of them for any cause, an action ancillary to such first action, in any jurisdiction in which such stockholders may be found, may be brought; that an action to enforce such a liability is upon contract; that the judgment in the original action is binding on all stockholders, whether parties thereto or not, as to the amount due to creditors of the bank, and on all creditors entitled to the benefits of the stockholders' liability to creditors, and as to the respective rights of the particular creditors; that a stockholder of a bank organized under the laws of Minnesota, wherever he may reside, is bound by its laws, and his liability in accordance therewith may be enforced wherever he may be found and without any judgment there obtained against the corporation, if it be a place where no such judgment is possible. The complaint further alleged, in effect, that in January, 1894, an action was commenced, in a district court for the State of Minnesota having jurisdiction of the subject, against the banking corporation named and its stockholders, by a creditor of such bank, suing in his own behalf and that of all
others who might come in and participate in the action, to
79 enforce the liability of such stockholders to such creditors,
and that such proceedings were thereafter had in such action that the amount of the indebtedness of the bank wes adjudicated according to the laws and judicial system of Minnesota, and that the total amount collectible from all the stockholders of the bank, aside from the defendant, has been judicially determined to be, and

in fact is, less than sufficient to pay such indebtedness by over $80,000; that defendant, being a non-resident stockholder, residing in Pierce county, Wisconsin, could not be reached in such action, and that she is liable to the creditors entitled to participate in the benefits of the stockholders' liability to the extent of $3,800, with interest thereon from April 28, 1897. There were further allegations in the complaint showing that the receiver appointed in the creditors' action at the domicil of the corporation, and all the creditors whose claims were established in such action and entitled to participate in the benefits of the stockholders' liability, are joined as plaintiffs in this action, that they came to this State after having exhausted all remedies at the domicil of the corporation for the satisfaction of their claims, that they instituted this action against the defendant stockholder in this State because she could not be reached in the original action, and that this action is ancillary to the action brought at the home of the corporation. The prayer for judgment is: 1st. That defendant be required to pay $3,800 as her liability to plaintiffs, with interest from April 28th, 1897, at the rate of seven per cent per annum, with costs and disbursements, and that plaintiffs have execution therefor. 2. That plaintiff, A. C. Finney, be appointed receiver to collect the judgment and distribute the proceeds among the plaintiffs according to their respective rights in the fund. 3. That the court award such further judgment or order as may be necessary to enforce such liability of the defendant, and grant such further relief as the court can grant in the premises.

To that complaint the defendant interposed a demurrer, upon the ground, among others, that it fails to state facts sufficient to constitute a cause of action. The demurrer was overruled, and from the order accordingly entered this appeal is taken.

MARSHALL, *J.*:

As we view this case, the disposition of the question of whether the complaint states facts sufficient to constitute a cause of action against the defendant is decisive of the appeal. Some of the primary questions, upon which the ultimate question turns, are not free from difficulty.

The nature of the statutory liability of stockholders of a bank to its creditors under the laws of Minnesota is precisely the same as under the laws of this State, according to the adjudications of the highest judicial tribunal in each. Sec. 2501 of the Minnesota statutes says that each stockholder in a bank shall be individually liable, in an amount equal to double the amount of stock held by him, for all the debts of such bank. Sec. 47 of the banking act of this State provides that stockholders in a bank organized under the laws of this State shall be individually responsible, to the amount of their respective shares of stock, for all its debts and liabilities of every kind. In Coleman *v.* White, 14 Wis. 700, it was said, in substance, that such liability is primary and absolute, attaching at the instant the liability of the bank accrues, but enforceable on a basis akin to that of a partnership liability with the limitation fixed by statute, of the par value of the stock held by each stockholder.

To the same effect is Gianella *v.* Bigelow, 96 Wis. 185; Booth *v.* Dear, *id.* 516; Gager *v.* Marsden, 101 *id.* 598; Foster *v.* Posson, 81 N. W. 124, in which cases adjudications of the Minnesota court are cited as authority. The supreme court of Minnesota has decided that the liability is several of each stockholder to all the creditors, but joint in the sense that there
81 must be one action in which all the liabilities of all the stockholders to all the creditors, and the equities of the stockholders between themselves, can be worked out. That is, in effect, as stated by this court, that the liability of the stockholders is akin to that of partners, with a limitation as to extent thereof fixed by the statute. Allen *v.* Walsh, 25 Minn. 543; Arthur *v.* Willius, 44 *id.* 409; Harper *v.* Carroll, 66 *id.* 487; Hanson *v.* Davison, 76 N. W. 254. While the Minnesota court, in the last two cases cited, said that the liability is several, not joint, it is evident that the expression was not intended in a strict legal sense, for it was there distinctly held that in respect to the manner the liability must necessarily be worked out, it is joint, in that all the creditors participating must appear on one side of the controversy and all the stockholders charged, within the jurisdiction of the court, must appear on the other. The courts of the two States are in perfect harmony in that an action at law, as an original proceeding, at least, cannot be brought in any jurisdiction by a single or any number of creditors against a single or any number of stockholders and that the liability, in view of the manner in which it must be worked out, is nearer to that of partners to creditors of a partnership than to any other with which it can be compared, as was said by Dixon, C. J., in Coleman *v.* White.

The Minnesota statutes, secs. 5905, 5906, provide a remedy for the enforcement of the statutory liability of stockholders to creditors similar in all respects to that indicated by the statutes of this State on the same subject: secs. 3223—4 R. S. The courts in both States have held that the plain legislative purpose was to furnish, by the statutes referred to, a method for the enforcement of the statutory liability of stockholders, and that it requires one action in equity, in favor of all creditors to be charged, and against the corporation if there are corporate assets to be reached. Cole-
82 man *v.* White; Gianella *v.* Bigelow, and Booth *v.* Dear, *supra* (Wisconsin). Allen *v.* Walsh; Arthur *v.* Willius, *supra* (Minnesota). Both courts have said that the remedy, plainly indicated by the legislature, for the enforcement of the liability, is inseparably connected with it and is exclusive. Allen *v.* Walsh; Foster *v.* Posson, *supra.* In regard to this last branch of the subject, it is claimed by the respondent that the doctrine of Allen *v.* Walsh has been to some extent changed, and that will be considered later.

If we could rest the case at this point there would be no question but that the complaint is fatally defective. Unless the suggested modifiation of the doctrine of Allen *v.* Walsh, in Minnesota, requires a different result, such must be the decision, for two reasons: 1st. The statutory right, coupled with the statutory remedy for its en-

forcement, clearly intended to be presented at the home of the corporation, is not transitory. 2nd. The action in a Minnesota court is a bar to any other action to enforce the liability of stockholders.

It is elementary that while a statutory remedy, not in terms exclusive, for the enforcement of a common law right, is cumulative, and that a statutory right, in the absence of a remedy to enforce it, may be made available by some one of the ordinary remedies for the redress of wrongs, a statutory remedy, not by its terms cumulative, to enforce a statutory right, is exclusive. Amer. and Eng. Enc. Law, vol. 1, p. 184*c*. The ultimate question under consideration at this point, as appellant's counsel suggests, was definitely passed upon in May *v.* Black, 77 Wis. 101, where it was said that a statutory right, if coupled with a remedy to make it effective, that remedy is exclusive and the right is enforceable only within the jurisdiction of its creation. Numerous cases are cited to support that doctrine, among them: Pollard *v.* Bailey, 20 Wall. 520; Fourth National Bank *v.* Franklyn, 120 U. S. 747; Bank *v.* Bliss,
83 89 N. Y. 338; Christenson *v.* Eno, 106 N. Y. 97; Nimick *v.* Mingo Iron Works Co., 23 W. Va. 184; Patterson *v.* Lynde, 112 Ill., 196. For further cases on the subject see: Huntington *v.* Attrill, 147 U. S. 647; New Haven Horsenail Co. *v.* Linden Spring Co., 142 Mass., 349; Bank of North America *v.* Rindge, 154 Mass., 203. The subject was fully discussed in Pollard *v.* Bailey, *supra*, and the decision there reached has been followed without exception in the Federal Supreme Court. Waite, C. J., speaking for the court, said: "The individual liability of stockholders in a corporation for the payment of its debts is always a creature of the statute. At common law it does not exist. The statute which creates it may also declare the purpose of its creation and provide the manner of its enforcement. Here the liability and the remedy were created by the same statute. This being so, the remedy provided is exclusive of all others. A general liability created by a statute, without a remedy, may be enforced by a proper common-law action, but where the provision for the liability is coupled with a provision for a special remedy, that remedy and that alone must be employed." So, in Erickson *v.* Nesmith, 4 Allen, 233, it was said: "A creditor of a corporation established in New Hampshire, the stockholders of which are individually liable for its debts, under the statutes of that State cannot maintain a bill in equity to enforce his claims against the stockholders in Massachusetts, although some of them live here." In Marshall *v.* Sherman, 148 N. Y. 9, after an exhaustive review of decisions on the subject, it was said in substance, that while it is not easy to state with exactness the principle upon which the courts of one State will not take jurisdiction of an action to enforce against one of its citizens a stockholder's liability under the laws of another State, the great weight of authority is against the maintenance of such an action. The case of May *v.* Black, *supra*, is there cited as
one of the significant instances where the law has been so de-
84 clared. It is useless to pursue this subject further. There was little use of saying more in regard to it than to state the law as indicated and refer to the decisions of our own State establishing

it as the prevailing rule here. Our attention is called to some recent adjudications which are said to conflict with the rule that a statutory liability of stockholders to creditors will not be enforced outside the jurisdiction of the State creating it, which, though in point as to the abstract question, are not as applied to the facts of this case.

One of the most significant cases referred to is Bank *v.* Ellis, 172 Mass. 39. It differs from Marshall *v.* Sherman, *supra*, in that it holds that the statutory liability of stockholders under the Kansas statute can be enforced in a foreign jurisdiction, solely upon the ground, however, that the law of Kansas does not furnish an exclusive remedy to enforce the right, according as such law is construed in the home jurisdiction; that every stockholder is thus liable in an action at law, to the first creditor who pursues him, in any court where service can be made upon him, till he has paid the full amount of his statutory liability, such liability being treated as in every sense several and on contract, so that the remedy of a creditor to enforce it can as well be pursued in one jurisdiction as another; and that under such circumstances a foreign jurisdiction should lend its aid to creditors against stockholders within its reach if thereby no serious inconvenience or injustice will be inflicted upon its own citizens. Turning to those statutes coupling a right with a remedy against stockholders, the court said: "This court has many times decided that the statutes of other States, creating the liability of stockholders to creditors of a corporation, which provides for a suit of a special kind to which the corporation and all stockholders are to be made parties, will not in general be enforced by the courts of this State; the special
85 remedy provided by the statute must be pursued, and as the statutes of a State have no force *ex propria vigore* beyond the territorial limits of the State, the remedy usually must be pursued in the State where the corporation has been established and the statute passed." Citing numerous cases in that and other courts, including May *v.* Black, *supra*. The court, having come to the conclusion that the cause of action under the Kansas statute was transitory, tested the question of whether courts of Massachusetts should take jurisdiction to enforce it by the general principles governing the conduct of courts in enforcing rights dependent upon foreign laws, which principles, other than such as relate to penal statutes, were stated, in substance, as follows: The foreign law must not contravene the policy of the State whose jurisdiction is invoked, or be contrary to public morals or abstract justice, or be calculated to injure the State or its citizens; the jurisdiction invoked must be able to reach all the parties affected by the litigation, so as to do complete justice between them, and it must be able to attain that end consistent with its own forms of procedure. Testing the situation before the court by such principles, it was concluded that the enforcement, in the courts of Massachusetts, of the statutory liability of a stockholder, resident in that State, of a Kansas banking corporation, does no injustice to such stockholder, because, if he be compelled to pay, he has the same right to pursue his associate stockholders for contribution as if he were a citizen of, and compelled to

respond to creditors in, Kansas; that the difficulties are no greater in the one case than in the other; that whatever difficulties exist, they were created by the Kansas statute, which permits individual actions at law against stockholders wherever they may be found, which law entered into the stockholder's contract with the corporation and its creditors when he became a member of such corporation.

86 So it will be seen that the Massachusetts case, confidently relied upon by the respondent, does not militate at all against the doctrine that a statutory right, dependent in the home jurisdiction upon a statutory remedy, must be enforced in such jurisdiction or not at all, or against the doctrine that a statutory right cannot be enforced in a foreign jurisdiction unless all the necessary parties to an action of that kind are before the court, nor if its enforcement will violate the policy or will subject the citizens of the foreign jurisdiction to serious inconvenience or injustice. It was principally on the latter ground that the New York court, in Marshall *v.* Sherman, declined to take jurisdiction.

Another case confidently referred to is Bank *v.* Lawrence (Mich.), 76 N. W. 105. The action was to enforce a statutory liability created by the Kansas statute, and jurisdiction was taken for the same reason as that stated by the Massachusetts court in the case before referred to, that is, upon the sole ground that the liability under the Kansas statute, as construed by its court, is enforceable by an action against any stockholder as an ordinary liability on contract, till such stockholder shall have paid to creditors the full amount for which he is responsible; that the action is transitory and should be enforced in all jurisdictions the same as other actions on contract, that can be as well enforced in one jurisdiction as in another, and where there is no good reason why the foreign court should not lend its aid to the enforcement of the right. True, the Michigan court made the extraordinary statement that the right to maintain a suit to enforce a statutory right under the Kansas statute in Michigan does not depend upon the law of comity. That was unnecessary to the decision. It is directly contrary to Bank *v.* Ellis, and, as it seems, to elementary principle. In all cases where a court is called upon to give effect to a right dependent upon a foreign

87 statute, it involves the enforcement of a foreign law and its action in that regard depends upon the rule of comity. That, as it seems, is too clear for reasonable controversy.

Neither Bank *v.* Ellis, Bank *v.* Lawrence, Bell *v.* Farwell, 176 Ill., 189, nor any other of the numerous cases that might be referred to regarding the enforcement of the statutory liability of stockholders to creditors, created by the Kansas statute, and statutes of other States creating a several liability of stockholders to creditors, in the sense that each stockholder is made liable directly to each creditor and may be made to respond accordingly in an action at law against him alone wherever he may be found, have any significance in determining the right of creditors in a foreign jurisdiction under statutes like that of Minnesota and this State, which plainly require the equities of all stockholders as between themselves to be worked

out in a single action in equity at the home of the corporation, and the contributions of all stockholders accumulated in the action to be treated as one fund, to be administered for the benefit of all creditors in proportion to the respective claims against the corporation as established in such action to which such corporation is a necessary party if there are corporate assets to be reached, and a proper party in respect to the issue regarding the indebtedness for which stockholders may be held liable. By a moment's consideration of the distinction between the two statutory systems, represented by the Kansas statute and the statute of Minnesota, it will be seen that the remedial processes that will affect the purposes of one are entirely unadapted to the other. A failure to keep such distinction in mind has led text-writers and courts into the error of supposing that the decisions in regard to one of such systems are in conflict with those in regard to the other.

It is contended that, admitting the rule above discussed—that where a statutory right is created, coupled with a specific
88 remedy to enforce it, such remedy is exclusive and cannot be pursued outside the home jurisdiction, as indicated in May *v.* Black, it does not apply here, because we are dealing with a Minnesota law, and the supreme court of that State, in Hanson *v.* Davidson, *supra*, has decided that the statutory remedy given there to enforce the liability under consideration, is only exclusive so far as it goes, that it requires an original action, by a creditor or creditors, in behalf of all persons so circumstanced who shall come into the action, against all the stockholders of the bank within the jurisdiction of the court, and that the liabilities of all such stockholders must be there enforced, and the indebtedness of the corporation, forming the basis therefor and for any action that may thereafter be brought in aid of the statutory action determined; that the statutory remedy does not preclude the institution and prosecution of ancillary action to reach stockholders, either in the home or other jurisdictions, that cannot be reached in the first instance, and that such stockholders by such actions may be pursued in any jurisdiction in Minnesota where they can be found, and in any foreign jurisdiction where the court will permit it.

Such is the state of the law as it now exists in Minnesota. It is a wide departure from the doctrine announced in Allen *v.* Walsh, 25 Minn. 543, where the statutes governing the subject were carefully and plainly construed, which construction, for a period of some twenty years, covering that within which the liability in question accrued, was the settled law of the State. In the early case it was said, that the statute prescribes a single action in equity, in which the liabilty of all stockholders to all creditors and the equities between the stockholders must be worked out or not at all. There is no room to mistake what the court intended in that case. The following language was used: "It is reasonable to suppose that
89 the legislature intended by those sections (referring to the sections set forth in the complaint here) to provide an efficient and sole remedy for enforcing payment of the debts of an insolvent corporation out of the individual liability of its stockholders, for the

rule is well settled that where a statute which creates a right also prescribes an adequate remedy, the latter is to be taken as the exclusive one; that the chapter which gives this remedy forms a part of the general statutes, which were adopted in 1866 and which contain the enactment that creates the statutory liability, and therefore the rule referred to is fairly applicable. It is shown, from an examination of these sections, that the remedy they provide contemplates a single action, in which all persons having or claiming any interest in the said action shall be joined or properly represented and their rights, equities and liabilities finally settled and determined."

We might easily, but it would draw this opinion out to an unnecessary length, refer to the decisions that followed Allen *v.* Walsh down to Hanson *v.* Davison, and show that the plain language of the early case was taken and applied in every instance in its literal sense.

In view of the foregoing, we read with some surprise the statement of the court in the Hanson case that the doctrine of Allen *v.* Walsh does not go so far as to preclude the institution and prosecution of an action ancillary to the principal action against those who cannot be brought in in the first instance. The reason of the later decision does not appeal very strongly to our judicial judgment. It starts out by overturning twenty years of established law at home and runs counter to the decisions of this and all other States where similar laws exist. While admitting that the Minnesota statute gives a specific remedy for the enforcement of the right under consideration, and that in pursuing such remedy the corporation may be a necessary party, and that such remedy must be pursued at the home of the corporation, the court not only ignores, as it seems, the law of the State long and firmly established, but that elsewhere, as indicated, but ignores the principle, of universal application, that a remedy coupled with a new right and evidently given for the purposes of its enforcement is exclusive.

To justify the position taken, without expressly overruling its long line of decisions to the contrary, the Minnesota court arbitrarily engrafted on to the existing system an element that the language of the statute and of the court construing it, as well as elementary principles, plainly exclude. To sustain the new doctrine that there must be a statutory action in the first instance, commenced and prosecuted to a termination, and that other actions may be brought in the home and other jurisdictions, it became necessary to hold that the result in the first action, as to all questions necessarily there litigated, is binding not only on all persons made parties to such action, but all so circumstanced that they might have been made parties could they have been found within the jurisdiction of the court, and on all parties that might have been admitted as participants in the action upon their own application; that in an ancillary action all questions litigated in the principal action must be deemed at rest, so that while defendants in the first action have their day in court as to the vital questions standing at the threshhold of their

liability, those in actions subsequently brought are bound without having that privilege; that while some stockholders can have their equities as between themselves and associate stockholders settled in the action where their liability is enforced, others may be made to respond and to cancel their liability, and then be compelled to resort to some other action, in some other jurisdiction, to settle their equities with their associates. It is recognized that it would be unjust to bind a stockholder by an adjudication in an action to which he is
91 not a party; but it is said that such is not the result of the new doctrine, because in the first action the corporation stands for all of its stockholders who are not present. How that can be it is easy to assert, but exceedingly difficult to demonstrate upon principle. The cases cited by the court do not appear to touch the question, as clearly indicated in the able dissenting opinion of Mr. Justice Canty. We shall not take time to review the authorities which the learned court refers to, to sustain its position on this branch of the case; suffice it to say, that they are all cases to enforce corporate rights. They do not appear to be in point in any respect to the theory they are used to support; not one is a case to enforce a superadded liability of stockholders to creditors or case involving any analogous question.

The corporation is not made a defendant in the principal action as a representative of the stockholders in any sense. It is joined of necessity only where there are corporate assets which ought to be applied to the payment of the debts. Otherwise, it is a proper party, but only for the purpose of establishing against it as a finality the amount of the indebtedness for which the stockholders are liable. The primary right to be adjudicated in such an action is the stockholders' liability. As an incident thereto, where there are corporate assets which should be applied to the payment of the indebtedness, the corporation must be brought in for the purpose of sequestrating and reaching such assets. If there are no such assets the corporation need not be made a party at all. That has been repeatedly held by this and other courts. Booth *v.* Dear, *supra;* Sleeper *v.* Goodwin, 66 *id.*, 577; *In re* Ins. Co., 56 Minn. 180; Minneapolis Baseball Co. *v.* City Bank, 66 *id.* 441.

We shall not further discuss the present state of the law governing the subject under consideration as it exists in the State of Minnesota. There are many features, not before referred to, that
92 are entirely out of harmony with the law here and elsewhere under similar statutes. While the statutes of Minnesota as thus construed by its court are supreme in that State, their effect here depends upon the law of comity.

The doctrine of Hanson *v.* Davison, as we view the decisions cited in support of it by respondent's counsel, and all others bearing on the subject that have come under our notice, from a pretty thorough study thereof, is without substantial support except by Hale *v.* Harden, 95 Fed., 747, where two Federal district judges rendered a decision following such doctrine and reversing the circuit judge who decided the case in the first instance, and the third member of the court, a circuit judge, dissented from his associates in a vigorous

and quite exhaustive opinion in which he stated, in substance, after reviewing the authorities, that the decision in Hanson *v.* Davison is so out of harmony with the previously established doctrine of the Minnesota court and with elementary principles, and so subversive of the rights of parties equally interested in a controversy to an equality of remedies, and to the right of every person to his day in court as to every material question involving his interest, that there is no rule of comity which requires or justifies its recognition in any other jurisdiction.

With due respect for the able court that pronounced the decision in Hanson *v.* Davison, we have reached the same conclusion as that expressed in the dissenting opinion referred to. To give effect to the Minnesota statutes as now construed by its highest tribunal would be unjust to the defendant, because it would, in effect, make a liability enforceable here that was not enforceable when it accrued and that could not have been enforced under the law of Minnesota as it existed prior thereto during the time the defendant was a member of the corporation; it would subject defendant to
93 substantially an independent action to enforce her liability, while, when it accrued, it was enforceable only in an action in equity at the domicil of the corporation, having sole jurisdiction of the entire subject of stockholders' liabilities to the creditors of the corporation, and of all questions necessarily incident thereto; it would conclude her, as to questions vital to her liability, by a judgment rendered in an action to which she was not a party; whereas when she became a member of the corporation she did so in contemplation of a liability with certain incidents, she would be burdened with materially different incidents; whereas the plain purpose of the law is that all stockholders shall stand equally as regards rights and remedies, it would subject the defendant to a much more burdensome remedy, before her ultimate rights could be determined and enforced, than it does the resident stockholders; it would result in giving to resident stockholders their day in court and denying that valuable right to the defendant; it would give effect to a law which is contrary to the policy of the law of this State.

For these and many other reasons that might be named, the law of Minnesota, as at present understood, should not be made effective here. Clearly the court cannot, consistent with the rules of comity, give effect to a doctrine which, if recognized, would lead to the oppressive results mentioned.

This court recognizes, fully, the importance of interstate comity and uniformly freely gives effect to it as regards the laws of sister States when it will not seriously violate the policy of our own laws or the rights of our own citizens. Tested by that standard and the most liberal rules usually applied to the subject, courts of this State cannot lend their aid in the circumstances presented in the complaint before us. A liberal course in the enforcement of the
94 laws of other States in proper cases should be the rule, but the parmount duty of our judicial system is to safeguard our own State policy and prevent injustice to our own people within reason-

able limits. Gilman *v.* Ketcham, 84 Wis. 60; Emery *v.* Burbank, 163 Mass. 326; Seamans *v.* Temple Co., 105 Mich. 400; Bank *v.* Ellis, 172 Mass. 39; Dearing *v.* McKinnon Dash Hardware Co., 33 App. Div. 31.

The doctrine of the Hanson case is not sustained, in its main features, in the home court, upon any other theory than that the corporation in the original action stands for all the absent creditors, and that a judgment as to it, after it has ceased to exist for any practicable purpose, concludes such absent members on questions in which the corporation has no interest and which it is bound to protect for the benefit of such members. That doctrine, as stated in the dissenting opinion referred to, in the Federal court, was never promulgated in Minnesota prior to Hanson *v.* Davison, and no case has been found elsewhere, except Hale *v.* Harden, where it has been even partially recognized, unless based on some special statute entering into the contract sought to be enforced.

The conclusion reached is, that the complaint fails to state a cause of action that can be entertained by the courts of this State, and that the decision of the lower court to the contrary must be reversed and the cause remanded for further proceedings according to law.

By the court: So ordered.

95 STATE OF WISCONSIN, }
Supreme Court. }

I, Clarence Kellogg, clerk of the supreme court of the State of Wisconsin, do hereby certify that I have compared the above and foregoing with the original opinion of the court on file in my office in the above-entitled cause, and that it is a correct transcript therefrom and of the whole thereof.

In testimony whereof, I have hereunto set my hand and [SEAL.] affixed the seal of said court, at Madison, the twenty-fifth day of April A. D. 1900.

CLARENCE KELLOGG,
Clerk of the Supreme Court of Wisconsin.

96 [Endorsed:] State of Wisconsin, supreme court. A. C. Finney, as receiver &c., respondents, against Mary A. Guy *et al.*, appellants. Certified copy of opinion of Marshall, J. Fee for this copy, $—. Pierce county, Wis. Filed April 27, 1900. L. G. Spinney, clerk circuit court. Filed June 7, 1901. Clarence Kellogg, clerk of supreme court, Wis.

97 A. C. FINNEY, as Receiver, ET AL., Respondents, }
vs.
MARY A. GUY, &c., Appellant. }

DODGE, *J.* (dissenting):

The decision in this case seems to me to destroy a clear and absolute right by denying any remedy for its enforcement and that too for no better reason than mere inconvenience to courts in their pro-

cedure, an inconvenience too which seems to me rather imaginary than real. This is a result which is not to the credit of the courts and should not be reached without a struggle to avert it. The constitution of Minnesota provides, and at the time the defendant acquired his shares of stock did provide: "Each stockholder in any corporation * * * shall be liable to the amount of stock held or owned by him." Under that provision the defendant with her costockholders were permitted to be a corporation. By availing herself of that privilege she entered into an absolute contract with the creditors of the corporation to pay, if needed, after exhausting the assets of the corporation, a sum equal to the par value of her stock. That such is her position and such the relation to creditors which she assumed, is the settled law of the State of Minnesota. Willis *v.* St. Paul Sanitation Co., 48 Minn. 140; Hanson *v.* Davison, 76 N. W. 254. Not only is it the law now, but so it was at all the times when defendant acquired or held her stock. I can hardly believe that the suggestion is deliberately made in the opinion of my brethren that the court has changed the law by its decision in Hanson *v.* Davison so that it is now other than it was before. Courts do not make or change law—they declare and administer it—and the supreme court of Minnesota has by the
98 case last mentioned simply declared what the law of that State has been ever since the adoption of the constitution. True, that court or the author of the opinion in an earlier case had indulged in certain remarks from which might be drawn inferences inconsistent with the decision in Hanson *v.* Davison, but those remarks were mere *obiter dicta* which, as is usual with *obiter dicta*, did not serve to make or establish any law but merely to subject to criticism the opinion containing them. This absolute liability existing on the one hand and its corresponding right upon the other, this court is confronted by the command of the constitution of Wisconsin, art. 1, sec. 9:

"Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive in his person, property or character; he ought to obtain justice freely and without being obliged to purchase it, completely and without denial, promptly and without delay, conformably to the laws."

That command is disobeyed and the excuse does not seem to me sufficient. That excuse is that this court, like the court of Minnesota, long ago decided that serious inconvenience and confusion would result from enforcement of the individual liability of each stockholder at the behest of each creditor and therefore that, for mere convenience of procedure, the action which the courts were bound to extend to a creditor having such a right should be an equitable one, in which, as plaintiff, should be joined all the creditors, either actually or by representation, and to which should be joined such of the stockholders as could be brought within the jurisdiction of the court, together with the corporation itself, to the end that in the one action the court might ascertain the extent to which the assets of the corporation were inadequate to satisfy its debts and the resulting extent of the liability of stock-

holders and could adjust and apportion that liabilty amongs
99 such of them as were solvent. That is the whole scope an
extent of the decisions in this State, from Coleman *vs.* White
14 Wis. 700, to Foster *v.* Posson, 81 N. W. 124. That too is the ful
extent of the decisions of the supreme court of Minnesota. Nov
for the first time it is held that the judgment in such a suit dis
charges the liability of all stockholders, whether parties to it o
not, and that the stockholder who evades the jurisdiction, either a
a fugitive or as a non-resident, until the judgment has been ren
dered, has successfully defied and annulled the constitution of Min
nesota, and of this State as well. The cases referred to could no
with propriety go further than decision of the questions presented
in them. Courts are created to decide controversies, not to emit ab
stract treatises. It is therefore, as always, to be presumed that an
utterances general in their terms were not intended by the court t
apply to controversies or situations distinguishable from those pres
ent for decision. The assertion in Coleman *v.* White that a genera
equitable suit with all creditors as plaintiffs and all stockholder
within the jurisdiction together with the corporation as defendants
is the exclusive remedy, could mean no more than that such
remedy is exclusive of a direct action at law by one creditor agains
one stockholder when the equitable procedure was neither obstructed
nor exhausted. So the assertion in Foster *v.* Posson that the judg
ment in such general suit is final as to all rights whether as betwee
creditors and stockholders or as between different stockholders
must be understood as limited to stockholders over whom the cour
had jurisdiction, since that was the situation of those litigating a
alleged by the complaint, though the fact is not made apparent i
the opinion.

The suggested inconveniences attending the enforcement of th
creditors' rights against stockholders who successfully evade th
jurisdiction in the original suit are quite fully demonstrated
100 to be insignificant by the reasoning in Hanson *v.* Davison
and in Hale *v.* Hardon, 95 Fed. Rep. 747, which I shall for
bear repeating. In the case presented by the complaint at ba
there are absolutely none. The excess of debts over all assets i
an amount exceeding the total stock and the entire exhaustion o
all stockholders over whom jurisdiction can be obtained are se
forth, and the absolute liability of defendant for a definite amoun
with no possible right of contribution against any solvent costock
holders is made to fully appear. Is it not the part of justice t
vindicate the clear rights of the plaintiffs in this case where it i
obvious that no undue or unequal injury will be done the defend
ant, rather than to perpetrate certain wrong on the plaintiffs fro
mere apprehension that under some other circumstances it migh
not be easy to fully protect a defendant? If either is to suffe
should it not rather be the stockholder, who by the same diligenc
she finds easy when demanding her dividends could have informe
herself of the general litigation, and, by appearing therein, hav
protected herself from any inequality?

I the more deplore this decision because it diminishes the sol

vency of our own banks and denies to their creditors the liability of any stockholders who by reason of non-residence or otherwise may escape the process of the court in which the general equity suit must be prosecuted. It invites fraud and evasion by offering exemption to stockholders upon the easy expedient of placing their holdings in the names of non-residents. These are evils which, with the probable drastic legislation to avert them, seem to me much more terrible than the *the* inconvenience of courts or incongruity in mere forms of procedure.

Since the decision of this case the opinion of the Supreme Court of the United States in Whitman *v.* National Bank, 20 Sup. Ct. Rep. 479, has been published and seems to me to be squarely
101 in conflict with the opinion of this court. True, the liability under the Kansas constitution was there under consideration, but the recovery was justified not alone because the statute of Kansas would permit it, but because the provision of the constitution was self-executing and without the aid of any statute imposed a contract liability upon holders of stock enforceable in any court of general jurisdiction, considerations equally characterizing the Minnesota constitution. In that case also is shown how untenable are the objections to the binding effect upon stockholders of the adjudication against the corporation in the general closing-up action, which objections are deemed so weighty by my brethren.

(Endorsement:) Filed April 25, 1900. Clarence Kellogg, clerk supreme court, Wis.

102 (*Order.*)

Circuit Court, Pierce County.

A. C. FINNEY ET AL., Plaintiffs,
vs.
MARY A. GUY ET AL., Defendants.

At a special term of the circuit court of the 8th judicial circuit of the State of Wisconsin, held at the court-house in the city of Hudson, on the first Monday of January, 1901, which said term is a special term of the circuit court for Pierce county.

Present and presiding, Hon. E. W. Helms, circuit judge.

The issue of law raised herein by the demurrer of the defendant to the complaint of the plaintiffs herein coming on to be heard at said term and the same having been argued by counsel, F. M. White, Esq., and F. W. Reed, Esq., appearing for the plaintiffs and John W. Bashford, Esq., for the defendant and the court being advised in the premises.

Ordered that the demurrer of the defendant to the complaint herein be sustained and the complaint be dismissed with costs to the defendant.

By the court,

E. W. HELMS, *Judge.*

STATE OF WISCONSIN, }
County of St. Croix. }

In Circuit Court.

I, W. J. Egbert, clerk of the circuit court of said county, do hereby certify that the within order was granted in this court, this 7th day of January, 1901, and ordered that the same be entered in the office of the clerk of the circuit court for the county of Pierce State of Wisconsin.

Witness my hand and official seal, this 7th day of January, A. D. 1901.

[SEAL.] W. J. EGBERT, *Clerk.*

To the above and foregoing order and each and every part thereof plaintiffs except.

The plaintiffs also duly excepted to the said order of the court made herein sustaining the demurrer to said complaint and dismissing the complaint on the ground that it denies them a right given by sec. 1, art. 4, of the Constitution of the United States which reads:

"Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof."

And the following statute passed in pursuance thereof, to wit:

Revised Statutes of the U. S. sec. 905: "The acts of the legislature of any State or Territory, or of any country subject to the jurisdiction of the United States, shall be authenticated by having the seals of such State, Territory, or country affixed thereto.

103 The records and judicial proceedings of the courts of any State or Territory, or of any such country, shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with the certificate of the judge, chief justice, or presiding magistrate, that the said attestation is in due form? And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken."

And that said order and decision is contrary to said provisions of the Constitution and laws of the United States.

E. W. HELMS,
Circuit Judge.

(Endorsements:) Original. Circuit court, Pierce county. A. C. Finney *et al.*, plaintiffs *v.* Mary A. Guy *et al.*, defendants. Pierce county, Wis. Filed Jan. 8, 1901. L. G. Spinney, clerk circuit court. Order recorded in Order Book F, page 339. Filed June 7, 1901. Clarence Kellogg, clerk of supreme court, Wis.

104 (*Bill of Costs.*)

Circuit Court, Pierce County.

A. C. FINNEY ET AL., Plaintiffs,
vs.
MARY A. GUY and MARY A. GUY as Executrix, Defendants.

Costs of defendants.

Retainer	$3 00
Brief and copies	3 00
Draft demur., 3 folios, at 25 cents each	75
Eng. 1 file 1 keep 1 serve 9 at 12 cents each	96
Draft demur., 3 folios, at 25 cents each	75
Eng. 1 file 1 keep 1 serve 9, at 12 cents each	96
Attending trial, 3 days, at $3	9 00
Drawing judgment, 3 folios	75
Draft bill of costs, 4 folios, at 25 cents each	1 00
Eng. 1 file 1 keep 1 serve 1, at 12 cents each	48
3 terms' term fees, at $2 each	6 00
1 motion	62½
	$31 27½
Cost statutory	25 00

Disbursements.

State tax	1 00
Jury fee	3 00

The above costs and disbursements are hereby adjusted, taxed and allowed this 12th day of March, A. D. 1901, at $25.00.

L. G. SPINNEY, *Clerk.*

To F. M. White, attorney for plaintiff:

Please take notice that on the 12th day of March, A. D. 1901, at one o'clock p. m., the undersigned will apply to the clerk of
105 the circuit court, Pierce county, at his office in village of Ellsworth, county of Pierce, State of Wisconsin, to have the within bill of costs and disbursements in the within-entitled action taxed, adjusted and allowed, and the amount thereof inserted in the entry of judgment in the within-entitled action.

Yours, &c., JOHN W. BASHFORD,
Attorney for Defendants.

To F. M. White, attorney for plaintiffs.

It is hereby stipulated by and between the parties hereto that the defendants' costs in said action shall be taxed at the sum of twenty-five dollars.

(Endorsements:) Circuit court, Pierce county. A. C. Finney *et al.*, plaintiffs *v.* Mary A. Guy and Mary A. Guy as executrix. Bill of costs. Due service of within admitted this 6th day of March, 1901. F. M. White, pl'ffs' att'y. Pierce county, Wis. Filed March 7, 1901. L. G. Spinney, clerk circuit court. Filed June 7, 1901. Clarence Kellogg, clerk of supreme court, Wis.

106 (*Judgment.*)

Circuit Court, Pierce County.

At a special term of the circuit court of the 8th judicial circuit of the State of Wisconsin, held at the court-house in the city of Hudson, on the first Monday of January, 1901, which said term is a special term of the circuit court of Pierce county, Wisconsin.

Present and presiding, Hon. E. W. Helms, circuit judge.

A. C. FINNEY, as Receiver; AMERICAN SAVINGS AND LOAN Association; W. D. Hale, as Receiver of said American Savings and Loan Association; Charles Wolsfeld, C. G. Mulquish, Mrs. H. Adams, John H. Jordan; C. G. Carr, Agent; Mrs. B. D. Adams, Cassius M. Conrad, Samuel H. Hall; C. S. Hulbert, as City Treasurer of the City of Minneapolis; Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles G. Van Wert, J. D. Laddy, Merchants' Bank of Winona, People's Savings and Loan Association, Guaranty Savings and Loan Association, A. F. Leckie, N. W. Wehman, and Harrison Pratt and Samuel M. Pratt, Copartners as H. Pratt & Co., Plaintiffs,

vs.

MARY A. GUY and MARY A. GUY as Executrix and Sole Residuary Legatee under the Will of Charles V. Guy, Deceased, Defendants.

The issue of law raised in the above-entitled action by the demurrer of the defendant to the complaint of the plaintiffs herein, coming on to be heard at said term and the same having been argued by counsel F. M. White, Esq., and Fred W. Reed, Esq., appearing for the plaintiffs and John W. Bashford, Esq, for the defendants and the court being advised in the premises at said term, ordered,

That the demurrer of said defendants to the complaint herein be sustained and the complaint be dismissed with costs to the defendants.

Now, therefore, on motion of defendant,

It is ordered and adjudged, that said action be and hereby is dismissed, and that said defendant have and recover of said plaintiffs her costs and disbursements herein taxed at twenty-five dollars.

Dated March 27th, 1901.

L. G. SPINNEY,
Clerk of Court.

107 (Endorsements:) A. C. Finney *et al. v.* Mary A. Guy *et al.* Judgment. Pierce county, Wis. Filed March 27, 1901. L. G. Spinney, clerk circuit court. Recorded in Order Book F, page 353–354. Filed June 7, 1901. Clarence Kellogg, clerk of supreme court, Wis.

108 (*Clerk's Certificate.*)

STATE OF WISCONSIN:

In Circuit Court for Pierce County.

A. C. FINNEY, as Receiver; AMERICAN SAVINGS AND LOAN ASSOCIATION; W. D. Hale, as Receiver of said American Savings and Loan Association; Charles Wolsfield, C. G. Melquist, Mrs. H. Adams, John H. Jordan; C. G. Carr, Agent; Mrs. B. D. Adams, Cassius M. Conrad, Samuel H. Hall; C. S. Hulbert, as City Treasurer of the City of Minneapolis; Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles G. Van Wert, J. D. Laddy, Merchants' Bank of Winona, People's Savings and Loan Association, Guaranty Savings and Loan Association, A. F. Leckie, H. Wehman, and Harrison Pratt and Samuel M. Pratt, Copartners as H. Pratt & Co., Plaintiffs,

vs.

MARY A. GUY and MARY A. GUY as Executrix and Sole Residuary Legatee under the Will of Charles V. Guy, Deceased, Defendants.

STATE OF WISCONSIN, } *ss:*
Pierce County, }

I, L. G. Spinney, clerk of the circuit court for Pierce county, Wisconsin, do hereby certify that the foregoing constitutes the entire record in the above-entitled action, and are all the original papers on file and of record in my office in said action, and that the same are transmitted to the supreme court of said State of Wisconsin pursuant to a notice of appeal and undertaking hereto attached, and which have been duly served upon me pursuant to the statute in such case made and provided.

In testimony whereof I have hereunto set my hand and [SEAL.] the seal of said court, this 4th day of June, A. D. 1901.

L. G. SPINNEY.

(Endorsements:) A. C. Finney as receiver *et al. v.* Mary A. Guy *et al.* Filed June 7, 1901. Clarence Kellogg, clerk of supreme court, Wis.

109 And afterwards, to wit: on the third day of September, A. D. 1901 the same being the second day of said term, the following proceedings were had in this court, in said cause, that is to say:

Pierce Circuit Court.

A. C. FINNEY, Receiver, &c., ET AL., Appellants,
vs.
MARY A. GUY ET AL., Respondents.

And now at this day came the said respondents, by R. M. Bashford, Esq., their attorney, and moved the court now here to strike certain papers from the record herein and to dismiss the appeal in this cause. Which motion having been argued by F. W. Reed, Esq. for the said appellants, and by R. M. Bashford, Esq. for the said respondents, and the court not being now sufficiently advised of and concerning its decision herein, took time to consider of the same.

110 And afterwards, to wit: on the twenty-fourth day of September, A. D. 1901, the same being the tenth day of said term, judgment was rendered in said cause, by this court, in the words and figures following, that is to say:

A. C. FINNEY, as Receiver; AMERICAN SAVINGS AND LOAN ASSOCIATION; W. D. Hale, as Receiver of said American Savings and Loan Association; Charles Wolfeld, C. G. Melquist, Mrs. H. Adams, John H. Jordan, C. G. Carr, Agent; Mrs. B. D. Adams, Cassius M. Conrad, Samuel H. Hall, C. S. Hulbert, as City Treasurer of the City of Minneapolis; Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles G. Van Wert, J. D. Laddy, Merchants' Bank of Winona, People's Savings and Loan Association, A. F. Leckie, H. Wehman, and Harrison Pratt and Samuel Pratt, Copartners as H. Pratt & Co., Appellants,
vs.
MARY A. GUY and MARY A. GUY as Executrix and Sole Residuary Legatee under the Will of Charles V. Guy, Deceased, Respondents.

Pierce Circuit Court.

Opinion by Justice Dodge.

This cause came on to be heard on appeal from the judgment of the circuit court of Pierce county; and the said respondents, by R. M. Bashford, Esq., their attorney, having moved the court now here to dismiss the appeal in this cause, and the court being now fully advised of and concerning the same, it is now here ordered and adjudged by this court, that respondents' motion to dismiss the appeal herein be and the same is hereby denied with ten dollars costs against the said respondents and in favor of the said appellants. And that the judgment of the circuit court of Pierce county, in this cause, be and the same is hereby affirmed, with costs against the said appellants taxed at the sum of thirty-three and $\frac{50}{100}$ dollars ($33.50).

111 And thereupon this court, by Justice Dodge, filed its opinion in said cause, in the words and figures following, that is to say:

A. C. FINNEY, Receiver, &c., ET AL., Appellants,
vs.
MARY A. GUY, Respondent.

Suit by the receiver of a Minnesota corporation, appointed by one of the courts of that State, to recover the additional stockholder's liability, under the laws and constitution of Minnesota.

The complaint was before this court and considered on demurrer in Finney *v.* Guy, 106 Wis. 256, wherein it was decided that the complaint did not state a cause of action. The former order of the circuit court overruling demurrer thereto was reversed and cause remanded "for further proceedings according to law." Upon filing remittitur, the circuit court entered an order "that the demurrer of the defendant to the complaint herein be sustained and the complaint be dismissed with costs to the defendant," whereupon judgment of dismissal was entered, from which the defendant appeals. The respondent moves to strike certain papers from the return on appeal, and moves separately to dismiss the appeal.

DODGE, *J.*:

The respondent presented and argued a motion to strike certain papers out of the record sent up from the court below, but we feel obliged to decline consideration for the reason that, such motion and a notice that the same would be made having been served on the appellant on the 15th day of August, 1901, the respondent, on the 17th day of August, served a notice that "the annexed notice of motion to dismiss the appeal in this action heretofore served on you on August 15, a copy of which is hereto annexed, is hereby
112 withdrawn." Annexed to that notice were copies of the notice and motion for striking out certain parts of the record. It may be, as is suggested, that respondent intended to withdraw a motion to dismiss, which also was served on the 15th day of August, but the annexing of copies of this particular motion to strike out could have left no reasonable doubt in the mind of the appellant that the motion now attempted to be presented was withdrawn. Appellant was justified in that conclusion and is therefore without notice, as our rules require, of the making of such motion. We may say in this connection, however, that one of the elements sought to be eliminated from the record, which consists in a declaration by the circuit judge appended to the order sustaining the demurrer, to the effect that the plaintiff excepted to such order and specified certain grounds of exception, is no proper part of the record before us on appeal, and its physical presence in the roll of papers transmitted by the clerk of the circuit court can have no effect. It cannot serve to inform us of any steps taken in the court below. Any such steps, which do not properly become a matter of record, can

only come to our notice by a bill of exceptions, settled and authenticated as such by the circuit judge. The document referred to is mere surplusage and of no efficacy whatever.

Respondent also moved, upon due notice, to dismiss this appeal for the reason that the judgment of the circuit court was, as asserted, entered in obedience to the mandate of this court, and therefore was and is the judgment of this court and not subject to appeal, citing in support of that position, Patten Co. *v.* G. B. & M. Canal Co., 93 Wis. 283. The position is not well taken. In the Patten case the action was remanded with directions to the court below to enter a judgment, which it did. In this case, upon the overruling of the demurrer, the cause was remanded "for further proceedings according to law." This placed it again in the control of the trial court to ascertain and decide what the law might be in
113 any future attitude the case might take; guided and controlled, of course, so far as this court had spoken, by the law laid down in its opinion. After the remission of the case, it was possible for the circuit court to decide either right or wrong as to the law, and therefore as to the steps that should be taken or decisions that might be rendered. Its decisions were not those of this court, but its own, and subject to review upon appeal as in other cases. Great Western T. Co. *v.* Burnham, 162 U. S. 339. It follows that the motion to dismiss must be denied and the action of the circuit court reviewed upon appeal to ascertain whether error has been committed.

Upon the merits, we are of course to consider first what was decided by this court upon the first appeal, for whatever we then decided has become *res adjudicata* and must control both the circuit court and this court at all subsequent stages of the same case. Priewe *v.* Wisconsin &c. Co., 103 Wis. 537; Wollman *v.* Ruehle, 104 *id.* 603; Richter *v.* Leiby Est., 107 *id.* 404. Turning to the former opinion and judgment in this court, 106 Wis. 256, we find it decided unambiguously that the complaint fails to state any cause of action maintainable in our courts. That being so, the action of the circuit court in sustaining the demurrer to that complaint, and, it not being amended, in entering judgment dismissing the same, is necessarily right and must be affirmed upon this appeal, no matter what new or different arguments might now be urged against the correctness of the conclusion then reached.

By the COURT: Respondent's motion to dismiss the appeal is denied, with ten dollars costs. The judgment appealed from is affirmed.

114 A. C. FINNEY, Receiver, &c., ET AL., Plaintiffs in Error,
vs.
MARY A. GUY, Defendant in Error.

I, Clarence Kellogg, clerk of the supreme court of the State of Wisconsin, do hereby certify that the above and foregoing is a true and correct transcript of all the record and proceedings now on file

and of record in my office with all things concerning the same in the above-entitled cause.

That the original writ of error, the petition therefor, the citation with its service endorsed thereon, the assignment of errors and a copy of the bond are appended to the return herein, and that they are all returned to the Supreme Court of the United States in obedience to the command of the writ of error hereto annexed.

In witness whereof, I have hereunto set my hand and affixed the seal of said court at Madison, this twenty-second day of October, A. D. 1901.

Seal Supreme Court of Wisconsin.

CLARENCE KELLOGG,
Clerk of Supreme Court, Wisconsin.

Endorsed on cover: File No. 18,296. Wisconsin supreme court. Term No. 443. A. C. Finney as receiver, American Savings & Loan Association, W. D. Hale as receiver &c. *et al.*, plaintiffs in error, *vs.* Mary A. Guy, and Mary A. Guy as executrix of Charles V. Guy dec'd. Filed October 25th, 1901.

No. 443. 180

FILED
JAN 13 1902
JAMES H. McKENNEY,
Clerk

Brf. of Hale for P. E. (on mo.)

Supreme Court of the United States,

OCTOBER TERM, 1901.

Filed Jan. 13, 1902.

A. C. FINNEY as Receiver, et al.,
Plaintiffs in Error,

v.

MARY A. GUY, &c.,
Defendant in Error.

Motion for Certiorari and other relief.
Petition for Certiorari and other relief.
Affidavit of A. J. Vinje, Circuit Judge.
Affidavit of Fred. W. Reed.
Brief in support of said motion.

W. E. HALE,
FRED. W. REED,
Of Counsel.

W. E. HALE,
FRED. W. REED,
Attorneys for Plaintiffs in Error.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D., 1901.

No. 443.

A. C. FINNEY, as Receiver, et al.,
Plaintiffs in Error,

vs.

MARY A. GUY,
Defendant in Error.

NOTICE OF MOTION.

To R. M. Bashford, Esq., Counsel for Defendant in Error:

Please take notice, that on Monday, the 20th day of January, 1902, at the opening of said court, or as soon thereafter as counsel can be heard, plaintiffs in error will move said court for an order directing the issuance of a writ of certiorari, and for such other and further relief as is prayed for in the petition hereto attached.

That said motion will be made upon the said petition, on the files and records in said case, and on the certified copies of the briefs, and of Rule IX of the supreme court of the state of Wisconsin, and on the affidavit of A. J. Vinje, a copy of which is hereto attached marked Exhibit B, and of Fred W. Reed, a copy of which is hereto attached marked Exhibit C, which papers are now in the hands of the clerk of this court, and are referred to in said application.

W. E. HALE and
FRED W. REED,
Attorneys and Counsel for Petitioners and Plaintiffs in Error.

IN THE SUPREME COURT OF THE UNITED STATES.

A. C. FINNEY, as Receiver, AMERICAN SAVINGS AND LOAN ASSOCIATION, W. D. HALE, as Receiver of said AMERICAN SAVINGS AND LOAN ASSOCIATION, CHARLES WOLSFELD, C. G. MELQUIST, MRS. H. ADAMS, JOHN H. JORDAN, C. G. CARR, Agent, MRS. B. D. ADAMS, CASSIUS M. CONRAD, SAMUEL H. HALL, C. S. HULBERT as City Treasurer of the City of Minneapolis, ANDREW SUNDBERG, W. R. SINKS, DAVID HUSTON, C. A. MUNSON, KATE RANK, SAMUEL M. PRATT, STATE OF MINNESOTA, M. H. TOWNSEND, HARRISON PRATT, CHARLES G. VAN WERT, J. D. LADDY, MERCHANTS BANK OF WINONA, PEOPLE'S SAVINGS & LOAN ASSOCIATION, GUARANTY SAVINGS & LOAN ASSOCIATION, A. E. LECKIE, H. WEHMAN, and HARRISON PRATT and SAMUEL M. PRATT, Copartners as H. PRATT & CO.,

Plaintiffs in Error,

vs.

MARY A. GUY, and MARY A. GUY as Executrix and Sole Residuary Legatee under the Will of Charles V. Guy, Deceased.

Defendant in Error.

PETITION.

The petition of the plaintiffs in error in the above entitled cause respectfully shows to this honorable court as follows:

1. That the Farmers' and Merchants' State Bank, a corporation organized under the laws of the state of Minnesota, became insolvent on the 20th day of June, 1893, and on said day made an assignment in insolvency. That all the property of said bank was applied by the assignee to the payment of its debts, leaving a large deficiency. That an action was duly commenced and duly prosecuted to judgment in the proper court of the state of Minnesota, to enforce the liability of the stockholders within said jurisdiction toward the payment of said deficiency, and that after all had been collected from said stockholders that could be so collected and applied toward the payment of said deficiency, there was still a deficiency exceeding the sum of $100,000 duly owing your petitioners from said bank, all which facts were duly adjudged in said action. That at the time of the failure of said bank the defendant in error was a stockholder therein and was then, and ever since has been, a resident and citizen of the state of Wisconsin. That on or about the first day of May, 1899, an action was commenced ancillary to the proceedings had in the Minnesota court against the defendant in error as defendant in the circuit court of Pierce county, in the state of Wisconsin, by your petitioners as plaintiffs, to enforce her liability as such stockholder, toward the payment of said $100,000 deficiency still owing your petitioners as adjudged by said Minnesota court. To the complaint filed by your petitioners in said cause the defendant in error demurred on the ground that said complaint did not state facts sufficient to constitute a cause of action, and on the 30th day of June, 1899, said circuit court, by A. J. Vinje, a judge thereof, duly made its order overruling said demurrer. That on the argument of said demurrer, and in the brief filed with said judge before said order was made, your petitioners duly pre-

sented to and claimed in said court, substantially, that the action against the stockholders to enforce their liability to creditors of said bank, was a substantive right of action on contract, enforceable in any jurisdiction, and to refuse to enforce said cause of action in said court of Wisconsin would be contrary to the constitution and laws of the United States, in that it denies plaintiffs a right given them by Section 1, Article IV of the Constitution of the United States, and by Section 905 of the Revised Statutes of the United States, that full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state, and that said records and judicial proceedings shall have such faith and credit given them in every court within the United States as they have by law or usage in the courts of the state from which they are taken.

2. That on October 14, 1901, said A. J. Vinje, said judge who made said order, duly made his affidavit that your petitioners did duly so present substantially said claims on said hearing in their typewritten brief and orally, a copy of which affidavit is hereto attached marked Exhibit "B" and made a part hereof.

3. That during all the times herein mentioned, there has been in force and effect in the supreme court of the state of Wisconsin the following rules, to-wit:

RULE IX.

> "Rule IX of this Court is hereby amended so as to read (87 Wis.) as follows: Hereafter in calendar causes, each party shall prepare and print a brief; and each statement and proposition therein which is based upon the record *must*

refer to the page of the record as contained in the printed case upon which the same is based. The brief of the appellant or plaintiff in error must contain a concise statement (1) the nature of the action and the issues involved; (2) the result of the trial or hearing in the court below; (3) the several errors relied upon for reversal; (4) in cases depending upon the evidence, the leading facts or conclusions which the evidence establishes or tends to prove; (5) the principles of law applicable to the case, and the authorities in support of the same.

The brief of the respondent or defendant in error may point out any insufficiency or inaccuracy in the brief of the opposite party, and supply, correct and answer the same in the order indicated; and may also, in the cases indicated, state any leading facts or conclusions which the evidence establishes or tends to prove, and any principles of law applicable to the case, and the authorities in support of the same. No extended discussion upon a mere question of fact will be permissible in any brief or at the bar, but the brief must refer to the printed case where all evidence bearing upon such leading facts or conclusions may be found. No costs shall be taxed for the printing of any brief failing to comply with this rule or containing a miscitation of authorities not corrected before the submission of the cause."

RULE XVIII.

"Before the calling of a calendar cause, the plaintiff in error or appellant shall file with the clerk eight copies of the printed case, and each party eight copies of his printed brief. The clerk shall deliver one copy of each to each of the justices, to the reporter, and to the state librarian."

That under the law and practice of said supreme court of the state of Wisconsin, the only method of making, recording or presenting to said court assignments of error and the principles of law

applicable to the case, and the claims of parties founded thereon, is by printing the same in the briefs filed in accordance with said rules.

4. That the defendant in error duly appealed to the said supreme court of the state of Wisconsin from said order overruling said demurrer, and your petitioners, as respondents, duly filed in said supreme court, in accordance with said rules of said court, a printed brief, in which brief they duly made the same claims as above noted, that to refuse to entertain said cause of action would be contrary to the constitution and laws of the United States. That said supreme court reversed said order overruling said demurrer on the ground that the cause of action arising under the laws of Minnesota and the judgment of its courts would not be enforced in the courts of Wisconsin, and remanded said cause to said circuit court for further proceedings, in accordance with law.

5. That said demurrer was again brought on for hearing in accordance with said direction of said supreme court, in said circuit court on the 7th day of January, 1901, and that on such hearing the said demurrer was ordered sustained, and the said complaint ordered dismissed and that on March 27, 1901, judgment was entered in accordance with such order.

6. That your petitioners, as appellants, duly appealed from such judgment to said supreme court of the state of Wisconsin, and on such appeal duly filed their brief with said supreme court in accordance with said rules of said court, and in said brief made their assignments of error as follows, to-wit:

"ASSIGNMENTS OF ERROR.

The circuit court erred:

1. In sustaining the demurrer.

2. In ordering the action dismissed.

3. In ordering and entering judgment of dismissal.

4. In that it denied plaintiffs a right given them by Sec. 1, Art. 4 of the constitution of the United States, and by Sec. 905 of the revised statutes of the United States that full faith and credit shall be given in each state, to the public acts, records and judicial proceedings of every other state, and that said records and judicial proceedings shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the state from which they are taken;" and devoted their entire said brief to the enforcement of said errors.

7. That said supreme court, on the 24th day of September, 1901, affirmed said judgment, and on said day a judgment of affirmance was duly entered in said supreme court.

8. That a writ of error to this court was duly allowed by said supreme court of the state of Wisconsin from such judgment on the 27th day of September, 1901.

9. That the clerk of said supreme court of Wisconsin made his return to said writ, but neglected and refused to make, as a part of said return, said briefs of your petitioners so filed in said court on said appeals, although requested so to do by your petitioners. And said cause was duly docketed in this court on October 25th, 1901, as Case No. 443 for October Term, 1901.

That the nature of the cause of action in said suit, the proceedings taken in said courts of Wisconsin, the questions passed upon by said supreme court of Wisconsin, the opinions of said supreme court on said appeals, and all the facts pertinent hereto, are more fully set out in said return which is now on file in this court and to which reference is hereby had, and made a part of this application.

10. That your petitioners duly requested said supreme court of Wisconsin to certify what your petitioners' assignments of error were in said briefs, and what claims were therein made concerning the federal right as hereinbefore set out; but that said court refused to so certify, either as to said assignments of error or as to said claims. That your petitioners duly requested said court to recite in their opinion handed down in affirming the judgment on the second appeal in this case what said claims and said assignments of error were, but said court refused so to do. That your petitioners duly requested the clerk of said court to certify to said assignments of error as a part of said return, but said clerk refused so to do. That your petitioners duly requested said clerk of said court, and said court to attach and make a part of the return to this court, said briefs of your petitioners duly filed in said appeals, but said clerk and said court neglected and refused so to do. That the attorney for the defendant in error refuses to consent that said briefs be made a part of the record in this court.

11. That Fred W. Reed, the attorney for your petitioners in all of said proceedings in said courts of Wisconsin, on October 16th, 1901, duly made an affidavit, a copy of which is hereto attached, marked exhibit "C" and made a part hereof, setting out the claims in said briefs concerning said Federal right as hereinbefore set out,

in the very words in which the same appeared in said briefs, and setting out also the assignments of error made in said brief on said second appeal in their exact words, in order to place in short form such claims and such assignments of error, for the reason that said briefs are very long, one of them being 91 pages in length, and the other 21 pages in length.

12. That in response to said writ of error the clerk of said supreme court of the state of Wisconsin transmitted to this court his return, but neglected and refused to include therewith said briefs, as a part thereof, but transmitted to this court with his return the following papers, to-wit:

(1) A certified copy of your petitioners' brief on the first appeal to said supreme court of the state of Wisconsin referred to above in paragraph 4 hereof.

(2) A certified copy of your petitioners' brief filed in said supreme court of the state of Wisconsin on the second appeal therein, containing your petitioners' assignments of error referred to above in paragraph 6 hereof.

(3) Said affidavit of said A. J. Vinje. (Exhibit B.)

(4) Said affidavit of said Fred W. Reed. (Exhibit C.)

(5) A certified copy of said Rule IX of said court referred to in paragraph 3 hereof.

That all of said papers are now in the hands of the clerk of this court, but that the clerk of this court declines to file said papers as a part of the record of said cause in this court; and reference is hereby had to all of said papers, and the same are made a part of this application.

13. Your petitioners respectfully submit that they are entitled to show to this court what federal rights were presented and claimed in said supreme court of Wisconsin and how it was done; and that the briefs so filed by your petitioners are a part of the record in said cause, and should be attached and made a part thereof; and that unless the relief herein prayed for is granted, your petitioners fear lest they be wholly powerless to show to this court what claim your petitioners made in said supreme court of the state of Wisconsin concerning said federal right hereinbefore set out.

That if said affidavit of Fred W. Reed is allowed to become a part of the record it can be printed in lieu of said briefs and save unnecessary cost and prevent an unnecessarily bulky record. That the only way to show what claim was made by your petitioners in said circuit court on the first hearing on said demurrer is by said affidavit of said A. J. Vinje, the judge before whom said hearing was had.

Wherefore, your petitioners respectfully pray that said return be remanded to said supreme court of the state of Wisconsin, and that a writ of certiorari be issued out of, and under the seal of this court, directed to said supreme court of the state of Wisconsin commanding the said court to certify and send to this court on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of said court in said case, including said briefs of your petitioners, or at least the assignments of error on said second appeal; or that this court make an order directing that said certified copies of said briefs now in the hands of the clerk of this court, and said certified copy of said Rule IX, and said affidavits of said A. J. Vinje and Fred W. Reed, be filed in this court

as a part of the record of said cause in this court; or that your petitioners may have such part of said relief, or such other and further relief or remedy in the premises as to this court may seem appropriate. And this your petitioners will ever pray.

A. C. Finney, as Receiver, American Savings and Loan Association, W. D. Hale, as Receiver of said American Savings and Loan Association, Charles Wolsfeld, C. G. Melquist, Mrs. H. Adams, John H. Jordan, C. G. Carr, Agent, Mrs. B. D. Adams, Cassius M. Conrad, Samuel H. Hall, C. S. Hulbert as City Treasurer of the City of Minneapolis, Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles G. Van Wert, J. D. Laddy, Merchants Bank of Winona, Peoples Savings & Loan Association, Guaranty Savings & Loan Association, A. E. Leckie, H. Wehman and Harrison Pratt and Samuel M. Pratt, copartners as H. Pratt & Co.,

Petitioners.

By FRED W. REED,

Attorney and Counsel for Petitioners.

W. E. HALE and FRED. W. REED,

Of Counsel for Petitioners.

State of Minnesota, County of Hennepin—ss.

Fred W. Reed being duly sworn, says that he is one of the attorneys and of counsel for the petitioners above named, and as such has had personal charge for said petitioners of the cause in the foregoing petition mentioned in all of the courts of the state of Wis-

consin; that he has read the said petition by him subscribed, and that the facts therein stated are true to the best of his information and belief.

FRED W. REED.

Subscribed and sworn to before me this 23rd day of December, 1901.

THOMAS F. WALLACE, JR.,

(Notarial Seal.) Notary Public,

Hennepin County, Minn.

EXHIBIT "B."

(TITLE OF CAUSE.)

AFFIDAVIT OF A. J. VINJE.

State of Wisconsin, County of Chippewa—ss.

A. J. Vinje being first duly sworn, deposes and says, that he is now, and for more than three years last past has been, a judge of the circuit court of the state of Wisconsin; that as such judge he made the order, dated June 30th, 1899, overruling the demurrer to the complaint in the above entitled cause; that on the hearing on said demurrer, in his oral argument and in his typewritten brief submitted to me as such judge before said order was made, Fred W. Reed, the attorney for the plaintiffs, duly presented to the court and duly claimed that the statutory liability of stockholders to creditors is a substantive right of action arising on contract enforceable in any jurisdiction, and that to refuse to enforce in the courts of the state of Wisconsin, the cause of action set out in plaintiffs' complaint, would be contrary to the constitution and laws of the United

States, in that it would be a refusal to give due faith and credit to the proceedings of the courts of the state of Minnesota.

A. J. VINJE.

Sworn to and subscribed before me this 14th day of October, 1901.

C. E. PRESTON,
Clerk of Circuit Court.

(Seal Circuit Court, Chippewa County.)

EXHIBIT "C."

(TITLE OF CAUSE.)

AFFIDAVIT OF FRED W. REED.

State of Minnesota, County of Hennepin—ss.

Fred W. Reed being first duly sworn, deposes and says, that he is one of the attorneys for the plaintiffs in the above entitled cause, and the attorney who has attended to the actual prosecution of said cause; that on the hearing in said cause in the circuit court in and for Pierce county, Wisconsin, on the demurrer, after which hearing said demurrer was overruled by order dated June 30th, 1899, affiant presented to said court, before said order was filed, in his typewritten brief substantially the same claims as were thereafter presented to the supreme court of the state of Wisconsin in respondents' brief filed by him in said supreme court as hereinbelow recited; that in accordance with the rules of said supreme court, on the first appeal in said cause affiant, on the 1st day of March, 1900, duly filed in said court his printed brief, a true and correct copy of which

brief, duly certified by the clerk of said court under the seal of said court, is on file in the records of this court; that in said brief plaintiffs by their said attorneys, duly claimed as follows (pg. 36):

"The question before this court is in short this: Will this court refuse to enforce the solemn contract of this defendant, entered into under the laws of Minnesota, simply because she is a resident of the state of Wisconsin, the laws, their interpretation and the methods of enforcement of the two states, being practically identical? A question whether an unquestioned liability shall be enforced outside of the parent forum after all has been done there that can be done. * * *

To decline to maintain this action is to refuse to enforce a contract because made in another state, and is a simple refusal of justice; it is to declare that an unquestionable right shall go without a remedy."

And under this general proposition plaintiffs, in said brief, duly presented the following claims and the authorities to support same in words and figures as follows, (pg. 36-51):

"A cause of action arising on contract is a substantive right enforceable everywhere:

Walker vs. Whitehead, 83 U. S. 314, 317.
Roberts vs. Cocke, 38 Gratt. 207.

1. The statutory liability of stockholders to creditors is a substantive right of action arising on contract.

Bagley vs. Tyler, 43 Mo. App. 195-202.
Dennis vs. Court, 91 Cal. 548.
Hodgson vs. Cheever, 8 Mo. App. 315-321.

Guerney vs. Moore, 131 Mo. 650-672.

Tinker vs. Van Dyke, 1 Flip. (U. S.) 521.

Hobart vs. Johnson, 19 Blatch. 359.

Flash vs. Conn., 109 U. S. 371.

Western Natl. Bank vs. Lawrence, 76 N. W. 105.

Bank vs. Ellis, 172 Mass. 39.

First Natl. Bank vs. Gustin, 42 Minn. 327.

Henecke vs. Twomey, 58 Minn. 550.

Hanson vs. Davison, 73 Minn. 454.

Coleman vs. White, 14 Wis. 762.

Gianella vs. Bigelow, 96 Wis. 185.

Williams vs. Meloy, 97 Wis. 561.

III Thompson on Corporations, Sec. 3059.

A right of action arising on a statute is just as enforcable in any other state as a right of action under a common law.

Dennick vs. R. R. Co., 103 U. S. 11.

Bigelow vs. Nickerson, 70 Fed. 114.

Greaves vs. Neal, 57 Fed., p. 816.

The principle applied in these cases applies with equal force to the statutes enacting liability of stockholders.

Bell vs. Farwell, 176 Ill. 489.

Western Natl. Bank vs. Reckless, 96 Fed. 70.

Lowry vs. Inman, 46 N. Y. 119.

This action then is really one to enforce a valid contract as much so as if it were a promissory note made in the state of Minnesota; and to refuse to entertain this action is a refusal to enforce a contract simply because it was made in another state, and to refuse to recognize the validity of a solemn and just contract."

And also the further claims in said brief (pgs. 64-81) to-wit:

"This action is ancillary to the decree entered in the Minnesota court. The proceedings there had are binding on the stockholders everywhere, and to refuse to maintain this action is to refuse to give due faith and credit to the judgment of a sister state.

1. This is an ancillary action.

As twice before suggested in this brief, the question here arising is quite other than the one usually in such cases, in that this case is ancillary to exhaustive proceedings in the home jurisdiction. The considerations here presented are such that a court might readily maintain this action where it had before declined to maintain an original action (p. 64, citing various cases).

2. The judgment in the Minnesota court is binding here.

Harmon vs. Hunt, 21 S. E. R. 559 (N. C.).
Baltimore & Ohio R. R. vs. Smith, 54 O. St. 562.
Guerney vs. Moore, 131 Mo. 650.
Merchants Bank vs. Chandler, 19 Wis. 457.
Powell vs. Oregonian Ry. Co., 38 Fed. 187.
Stevens vs. Fox, 83 N. Y. 313.
Alexander vs. Donohoe, 143 N. Y., p. 203.
Howard vs. Glenn, 85 Ga. 238.
Great Western Tel. Co. vs. Gray, 122 Ill. 630.
Bates vs. Telegraph Co., 134 Ill. 536.
Hawkins vs. Glenn, 131 U. S. 319.
Glenn vs. Liggett, 135 U. S. 533.
Nickels vs. Stevens, 123 Mo., p. 96.
Holland vs. Development Co., 65 Minn. 324.

Hanson vs. Davison, 73 Minn. 454.
Hale vs. Hardon, 95 Fed. 747.

5. (Pg. 79) Not to enforce plaintiffs' judgment is to refuse to give due faith and credit to the judgment of a sister state.

In Huntington vs. Attrill, 146 U. S. 657, the facts are, a judgment was recovered in the state of New York under the statutes of New York against the defendant in 1863 for his liability as a stockholder and officer in a certain corporation. An action was brought in the state of Maryland to enforce the New York judgment. The court of appeals of Maryland sustained the demurrer to the bill on the ground that the judgment obtained in New York was in the nature of a penalty. A writ of error was issued out of the U. S. supreme court, and that court, in an elaborate and exhaustive opinion, holds that the refusal of the Maryland court to enforce said judgment was contrary to the constitution in that it did not give due faith and credit to the judgment rendered in the New York court. The court said (p. 80):

> "Nor do these provisions put the judgments of other states upon the footing of domestic judgments, to be enforced by execution; but they leave the manner in which they may be enforced to the law of the state in which they are sued on and pleaded or offered in evidence. (Macelmoyle vs. Cohen, 13 Pet. 312-325.) But when duly pleaded and proved in a court of that state, they have the effect of being not merely prima facie evidence, but conclusive proof of the rights thereby adjudicated; and refusal to give them the force and effect, in this respect, which they had in the state in which they were rendered, denies to the party a right secured to him by the constitution and laws of the United States."

In the case of Pelzer Mfg. Co. vs. Fire Ins. Co., 71 Fed. 826, which is an action to enforce a judgment of the state court, the court said, after reciting the necessary prerequisites (page 834),

> "But when all these are established, this judgment, when duly pleaded and proved in a court of the United States, sitting in South Carolina, has the effect, not only of prima facie evidence, but of conclusive proof of the rights thereby adjudicated. A refusal to give it the force and effect, in this respect, which it has in the state in which it was rendered, denies to the judgment creditor a right secured to him by the constitution and laws of the United States."

In the Central Trust Co. vs. Railroad Co., 65 Fed. 257, which was an action in the federal court upon a judgment of the South Carolina court recovered in a cause of action originating in Georgia, the court said (page 262),

> "Whenever, by either the common law or the statute law of the state, a right of action has become fixed and legal liability incurred, that liability may be enforced and the right of action pursued in any court which has jurisdiction of such matters and can obtain jurisdiction of the parties. * * * They have the right to inquire into the jurisdiction of the court, and, above all, they are entitled to know that there was no fraud or collusion or gross neglect in obtaining the judgment. But, when all these are established, this judgment, when duly pleaded and proved in the court of the United States sitting in South Carolina, has the effect, not only of prima facie evidence, but of conclusive proof of the rights thereby adjudicated. A refusal to give it force and effect in this respect, which it has in the state in which it was rendered, denies to the judgment creditor a right secured to him by the constitution and laws of the United States. (Citing Huntington vs. Attrill, 146 U. S. 686)." "

That on the second appeal in said cause to the said supreme court of the state of Wisconsin, the plaintiffs (who were appellants

on said second appeal), in accordance with Rule IX of said supreme court (a duly authenticated copy of which rule is on file with the clerk of the court in this cause), did on the 3rd day of September, 1901, duly file in said court their brief, which brief included their assignments of error and their points and authorities relied upon in the support thereof, a duly authenticated copy of which brief is on file in this cause with the clerk of this court. That in the said brief these plaintiffs, as appellants, duly made their assignments of error as follows (pages 3-4), to-wit:

"ASSIGNMENTS OF ERROR.

The circuit court erred:

1. In sustaining the demurrer.

2. In ordering the action dismissed.

3. In ordering and entering judgment of dismissal.

4. In that it denied plaintiffs a right given them by Sec. 1, Art. 4 of the constitution of the United States, and by Sec. 905 of the revised statutes of the United States that full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state, and that said records and judicial proceedings shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the state from which they are taken."

That the entire brief of appellants on said second appeal is devoted to the enforcement in said supreme court of the above 4th assignment of error; and that among other cases cited in support of said proposition are

Hancock Natl. Bank vs. Farnham, 176 U. S. 640, and

Whitman vs. Bank, 176 U. S. 559.

And in enforcing which argument, appellants made the following propositions; all of which were duly supported by citations of authorities as therein appears, to-wit:

"The liability here sought to be enforced is, though statutory in its origin, contractual in its nature." (Pg. 6.)

"There is no essential difference between this liability and the liability for unpaid assessments on stock." (Pg. 7.)

"The proceedings in the Minnesota court are binding on stockholders who are not before the court otherwise than by virtue of their membership in the corporation." (Pg. 7.)

"The construction of the Minnesota statute by the Minnesota court is binding on all other courts." (Pg. 7.)

"The right to enforce this liability is not a mere matter of comity, but is a right under the general principle of jurisprudence to enforce a contract." (Pg. 8.)

And says (p. 8):

> "If I understand these decisions rightly they hold that if the liability is contractual the cause of action is transitory, that whether or not it is contractual and therefore transitory depends on the construction of the laws by the court of last resort in the home state of the corporation; if such court has construed such laws so as to give a contractual liability such right of action on contract can be enforced anywhere, whether it be done under the general principles of jurisprudence or be regarded as a matter of comity, and where the action in the foreign forum is an ancillary action in aid of the proceedings already had in the home forum, a refusal to entertain such suit by the foreign court is contrary to the constitution and laws of the United States, which require that the *same* faith and credit must be given these proceedings in other states to which they are entitled in the state in which they were had."

And concludes as follows (pg. 19):

> "Now this court said (syllabus) in Eau Claire Natl. Bank vs. Benson, 106 Wis. 624: 'The constitutional or

statutory liability of stockholders of a corporation to its creditors, created by the laws of the state of Minnesota, must be held to be of the same nature here as by the highest court of such state,'and that that court having determined the nature of such liability 'this court is bound thereby.' And in Finney vs. Guy this court refuses to enforce the Minnesota law because (p. 625) '(1) The statutory right, coupled with the statutory remedy for its enforcement clearly intended to be pursued at the home of the corporation, is not transitory. (2) The action in a Minnesota court is a bar to any other action to enforce the liability of stockholders,' but this court admits (p. 271) that under Hanson vs. Davison the right of action is (p. 271, (1) Contractual and transitory, (2) Does not provide a special remedy enforceable only in the original action, (3) Is not barred as to stockholders not brought into the original action. Then under the admissions in the decision itself Finney vs. Guy is contrary to the federal constitution and laws, on the authority of Hancock Bank vs. Farnum and Whitman vs. Bank for it specifically refuses (p. 275) 'to give effect to the Minnesota law as now construed by its highest tribunal,' and says for reasons named (p. 276) 'The law of Minnesota, as now understood, should not be made effective here.'"

FRED W. REED.

Subscribed and sworn to before me this 16th day of October, 1901.

HOWE PAIGE,
Notary Public,
Hennepin County, Minn.

(Notarial Seal.)

BRIEF.

This brief presents the following propositions:

1. Plaintiffs in error claim the opinions filed in this cause by the supreme court of Wisconsin are by the statutes of Wisconsin a part of the record.

2. That an examination of those opinions shows that in deciding this case the federal question was *necessarily* involved and the federal right here claimed was necessarily passed upon and denied.

3. But the plaintiffs in error have the right to show to this court just what was "*claimed and presented*" to the Wisconsin supreme court, that under the rules and practice of that court the only way of presenting their assignments of error to that court was in their briefs, and under the facts of this case the proper, if not the only, method of presenting and claiming the federal right relied on was in said briefs required by the rules of that court to be filed in said court, that therefore such briefs are a part of the record and should have been returned as such.

4. That the ordinary method of completing the return is to remand with writ of certiorari to have such return completed; but

5. This court has power to amend the record here, since these briefs are before this court in the hands of its clerk and duly certified to by the clerk of the supreme court of Wisconsin, the amend-

ment requested has become a merely formal one and this court should direct that said briefs be filed and stand as a part of the record without remanding and without a writ of certiorari.

6. This court has always claimed and exercised the right to determine for itself what shall be admitted into the record in this court as tending to show what federal rights were claimed in the state courts and how it was done. In doing so this court will go outside the return or record proper in the state court. Under these propositions there should be admitted to this record:

(a). The two briefs, whether or not they are technically a part of the record in the state court.

(b). The affidavit of A. J. Vinje, the judge of the circuit court who overruled the demurrer, as the *only* method of showing what was claimed at that time.

(c). The certified copy of Rule IX as showing how assignments of error and claims of legal rights are to be presented to the supreme court of Wisconsin.

(d). A copy of Rule XVIII requiring such briefs to be filed with the clerk of that court.

(e). The affidavit of Fred W. Reed which simply places in short form for printing, the exact words in which the Federal right was claiming in said briefs, and states in exact words the assignments of error, while the briefs themselves are long; the first one being very long and discussing other questions, as well.

I.

The opinions of the Wisconsin Supreme Court are a part of the record.

The statutes of Wisconsin provide (Stat. 1898, Sec. 2410):

> "The supreme court shall give their decisions in all cases in writing, which shall be filed with the other papers in the case; and such decisions and all decisions and opinions delivered by the court or any justice thereof in relation to any action or proceeding pending in said court, shall remain in the office of the clerk. Every written opinion or decision of the supreme court which shall have been filed with the clerk, shall constitute and be held a part of the record in the action or proceeding in which it shall have been given and filed and shall be certified therewith to any court of the United States to which such action or proceeding or the record thereof may be in any manner certified or removed."

This court will therefore look into the three opinions returned here in this record, to-wit: 1. Opinion of Judge Marshall on the first appeal (reported in 106 Wis. 256). 2. Dissenting opinion of Judge Dodge on the first appeal (reported in 106 Wis. 277). 3. Opinion of Judge Dodge on second appeal (reported in 87 N. W. Rep. 255, current Nos. of Oct. 12 and 19); for all of these have by this statute become an actual part of the record for the determining of what federal question was involved or passed upon.

Gross vs. United States Moregage Co., 108 U. S. 477.

II.

The decision of the Wisconsin court necessarily denied the Federal right.

The complaint set out in the return alleges that under the laws and decisions of Minnesota, the right of action sued on is such.

1. That the liability of the stockholder is several and not joint.

2. That the action in the home jurisdiction is not the exclusive remedy, but that the liability of any omitted stockholder can be enforced by an action ancillary to such proceedings in any jurisdiction where he can be served with process.

3. That the cause of action is contractual and the action to enforce the liability is an action on contract.

4. That the proceedings had in the home jurisdiction are binding on the stockholder, whether a party or not, in that he is represented by the corporation and the judgment is in effect a judgment against him in his corporate capacity.

5. That the laws of the state of Minnesota are a part of the contract of the stockholder by virtue of his subscription to stock.

6. That his liability is primary and principal and not that of a surety of the corporation.

The supreme court of Wisconsin admits this to be the state of the Minnesota law, but says (see return, also 106 Wis., on page 275), that the decision of the Minnesota court in Hanson vs. Davison, "is so out of harmony with the previously established doctrine of the Minnesota court, and with elementary principles, and so subversive of the rights of parties equally interested in a controversy to an equality of remedies, and of the right of every person to his day in court as to every material question involving his interest that there is no rule of comity which requires or justifies its recognition in any other jurisdiction"; and again, (pg. 276): "For these and many other reasons that might be named, the law of Minnesota as at present understood should not be made effective here"; and

concludes (pg. 277) "that the complaint fails to state a cause of action *that can be entertained by the courts of this state* and that the decision of the lower court to the contrary must be reversed and the cause remanded for further proceedings according to law."

Judge Dodge begins his dissenting opinion (pg. 277) thus:

"The decision in this case seems to me to destroy a clear and absolute right by denying any remedy for its enforcement."

This court says that such a decision denies the federal rights secured by Sec 1, Art. IV, of the constitution of the United States and by section 905 of the revised statutes of the United States.

Hancock National Bank vs. Farnum, 176 U. S. 640.

And that on such a state of facts this court had jurisdiction because the Federal question was necessariiy involved.

Telegraph Co. vs. Purdy, 162 U. S. 329-334,

and this seems to be assumed also in

Lloyd vs. Matthews, 155 U. S. 222.

And in many other cases this court has held generally that if the decision of the state court necessarily involved the federal question or denied the federal right, this court has jurisdiction. This was the specific ruling in

Kaukauna Co. vs. Green Bay, 142 U. S. 254,

and the same attitude of this court is presented in

Furman vs. Nichol, 75 U. S. 44.

Chicago Life Ins. Co. vs. Needles, 113 U. S. 574.

Murray vs. Charleston, 96 U. S. 432.

Arrosmith vs. Harmoning, 118 U. S. 194.

Des Moines Nav. Co. vs Iowa Homestead Co., 123 U. S. 552.

Eureka Lake Co. vs. Yuba County, 116 U. S. 410.
Spencer vs. Merchant, 125 U. S. 345.
C. B. & Q. Ry. vs. Chicago, 166 U. S. 226.
O'Neill vs. Vermont, 144 U. S. 348.
Roby vs. Colehour, 146 U. S. 153.

III.

Though the Federal question is necessarily involved in the decision, still plaintiffs have the right to show this court that they duly claimed the Federal right, and that too in the only manner feasible, under the facts.

Plaintiffs prsented in their complaint a cause of action of such a nature that to refuse to entertain it in the courts of Wisconsin, would be contrary to Sec. 1, Art. IV, of the constitution of the U. S. and section 905 of the revised statutes of the U. S.. The naked refusal to entertain this cause of action is itself a violation of the rights here secured.

Now, as a physical fact, plaintiffs might have gone on and alleged in their complaint that if the court of Wisconsin refused to entertain this cause of action, they would violate this provision of the constitution and laws, but certainly such allegation in the complaint would not be proper pleading and the state court would undoubtedly have stricken it out on motion. At any rate plaintiffs had no right to assume in the first instance that the courts of Wisconsin would refuse to entertain the action, and thus violate these Federal rights.

When the cause came first before the circuit court of Wisconsin, the circuit court. of Wisconsin the circuit judge, A. J. Vinje, rec-

ognized these rights and overruled the demurrer, as is shown by his affidavit herein (exhibit B). The defendant appealed to the supreme court of Wisconsin, and the *only* method by which plaintiffs could then "claim or present" the Federal right to the supreme court of Wisconsin was in their brief. This they did. The supreme court renders an opinion which on its face violates these Federal rights, and sends the case back to the circuit court for further proceedings. The demurrer is then brought up again for hearing, and the circuit court sustains the demurrer and dismisses the complaint. Judgment is entered thereon, and from such judgment plaintiffs appeal, alleging as error that the decision was in violation of these Federal rights, and devoted their entire brief on that second appeal to the enforcement of such error.

Under Rules IX and XVIII of the supreme court of Wisconsin, (set out on pages 4 and 5 of the petition herein), the only way to present to the supreme court of Wisconsin the assignments of error and the Federal rights claimed in support of the same, was in said brief. That court has decided that no assignment of error will be considered in that court except such as are inserted in such brief.

Weyerhaeuser vs. Earley, 99 Wis. 445.

Grimm vs. The Town of Washburn, 100 Wis. 229.

That court also decided in *Butler vs. State*, 102 *Wis.* 364, that even when such assignments of error are presented, they will not be considered by that court unless argued.

Under such practice then these briefs became a part of the record in the supreme court of Wisconsin, and these plaintiffs have a right to present in some legitimate way to this court, the assignments of error and the federal rights claimed in such briefs. It is true

that the supreme court of Wisconsin might have shown the naked facts as to what these claims and assignments of error were by any one of four distinct methods:

1. By a certificate of the chief justice reciting, not the federal question in legal terms, but the actual assignments of error and claims as to federal right set out in the briefs in *haec verba*.

2. By directing the clerk to so certify.

3. By reciting same in the statement of facts in the opinion handed down on the final appeal.

4. By directing the clerk to certify up the briefs as a part of the return.

All of these methods was duly requested by the plaintiffs as appears in the 10th paragraph of their petition, but that court refused to certify in any manner. Whether or not such assignments of error and claims of federal right were sufficient to raise a federal question and give this court jurisdiction is for this court to say, but these plaintiffs earnestly insist they have a right to show this court in some way what *claims* they made and *how* they made them, and to leave to this court their sufficiency.

That this court will examine such briefs to determine the federal question presented in the state court, if in some way brought here, seems determined by Des Moines Nav. Co. vs. Iowa Homestead Co., 123 U. S. 552-554. Petitioners claim that the mere statement of the facts demonstrates their right to have these briefs placed before this court in some legitimate manner, for the purpose of determining the jurisdictional question.

If these briefs are technically a part of the record below, then certiorari is proper, if necessary.

A motion for certiorari is the ordinary method of completing the record (U. S. Sup. Ct., Rule XIV), if the return from the court below is defective, and is readily granted when applied for in season.

United States vs. Gomez, 1 Wall. 690-702.
M. K. & T. R. R. Co. vs. Dinsmore, 108 U. S. 30.
Elmore vs. Grymes, 1 Pet. 468-472.
The Rio Grande, 19 Wall. 178-188.
Field vs. Milton, 3 Cranch 514.

And this court has frequently, on a motion for certiorari, granted other relief that seemed more appropriate, although not prayed for.

In United States vs. Adams, 73 U. S., 101, 112, on motion for certiorari, the motion was overruled, but the record was remanded with directions to make new findings of fact.

In United States vs. Adams, 76 U. S., 661, on motion for certiorari the court said that the appellants were entitled to relief, but it did not regard certiorari proper and ordered what it considered a more appropriate remedy—that the record be remanded with instructions to find and certify additional matters of fact.

And in Hodges vs. Vaughan, 86 U. S., 12, on motion for certiorari, the motion was denied, but in place thereof leave was granted to the plaintiff in error to withdraw the transcript in order to enable the clerk of the court below to append the necesssary certificate.

In Woodward vs. Brown, 13 Pet., 1, the writ was denied and the amendment allowed in this court.

In Railroad Company vs. Schutte, 100 U. S., 644, on motion to dismiss the appeal for deficient record, appellant was allowed in-

stead thereof to defeat the motion by filing in this court before a certain date, certified copies of the missing papers.

V.

This court has power to amend, and since to allow these briefs to stand as a part of the record is, under the facts, in effect a formal amendment, it should be made here.

The two briefs which it is sought to make a part of the record are in the hands of the clerk of this court, each one duly certified to by the clerk of the supreme court of Wisconsin, and show they were duly filed in that court; but because they were not returned attached a part of the return, they are not considered a part of the record here. All that is needed is for this court to direct that they be filed here as a part of the record.

In Anon., 1 Gall., 22 Justice Story discusses the ability of the federal courts under the statutes to amend the record, and concludes (p. 23): "There is, then, in the nature of an appellate jurisdiction, nothing which forbids the granting of amendments."

In Woodward vs. Brown, 13 Pet., 1, on motion for certiorari because the clerk below had made an error in not entering the judgment according to the declaration, the motion was denied and the amendment was allowed here.

In Kennedy vs. Bank, 8 How., 586, the case was dismissed for want of jurisdiction, and afterwards was reinstated and the record amended. The court said (p. 610):

> "There is nothing in the nature of an appellate jurisdiction proceeding according to the common law, which forbids the granting of amendments, and the 32nd section of the Ju-

ridiciary Act of 1789 allowing amendments is sufficiently comprehensive to embrace both the appellate as well as original jurisdiction. 1 Gall., 22. But it has been the practice of this court, where amendments were necessary, to remand the cause to the circuit court for that purpose. The only exception to this rule has been where the counsel on both sides have agreed to the amendment. This has been often done, and it has not been supposed that there was any want of power in the court to permit it. The objection is that consent cannot give jurisdiction; this is admitted; but the objection has no application to the case. Over the subject matter of the suit and of the parties the court had jurisdiction, and the amendment corrected an inadvertence by stating the fact of citizenship truly."

This case is cited and relied upon as showing power in the appellate court to amend the record, in the following cases:

Warren vs. Moodey, 9 Fed. 673.

U. S. vs. Hopewell, 51 Fed., 800.

In re Brockway Co., 87 Me., 483.

In Udall vs. Steamship, 17 How., 17, the court said (p. 18):

"It has not been the practice of this court to allow amendments except by the consent of parties; though in the case of Kennedy et al. vs. Georgia State Bank, 8 How., 610, this court says, 'There is nothing in the nature of an appellate jurisdiction, proceeding according to the common law, which forbids the granting of amendments, etc.,' but the practice has been to remand the cause to the lower court for amendment."

In Hudgins vs. Kemp, 18 How., 530, the court said that amendment here might be made by consent, and refers to Woodward vs. Brown, supra, as a case of a correction of a mere clerical error, and says (p. 534):

> "But in the case before us there is no consent to amend, and the errors alleged are of a very different character from the mere formal error in the case of Woodward vs. Brown. And if it were otherwise, still, there should have been a motion to amend by inserting in the transcript the certificate above mentioned of the clerk before the motion was made to dismiss. But no such motion has been made, and the transcript now before the court is the one originally certified, without any amendment here by consent or by order of the court."

Which language would seem to recognize that to move to amend here is proper in the proper case.

In Gates vs. Goodloe, 101 U. S., 612, on a motion to dismiss, instead of dismissing, the court granted an application of the assignee in bankruptcy to be substituted as the plaintiff in error.

In Bowden vs. Johnson, 107 U. S., 251, on page 264, as a counter motion to a motion to dismiss, a new receiver moved to amend the record by substituting his name as plaintiff in error here, which motion was granted on the authority of Gates vs. Goodloe, supra.

In Sitt vs. Huidekopher, 131 U. S. (appendix), cxviii, there was a motion for certiorari, which motion was denied; but this court allowed the amendment of the transcript to show the entry of judgment in the court below on the authority of Woodward vs. Brown, supra.

The foregoing cases would seem to show conclusively that it is within the *power* of this court to direct that these briefs stand as a part of the return, and under the facts it does not seem to these plaintiffs that it would be a violation of the spirit of the *practice* in such cases to so direct.

VI.

This court determines for itself what shall constitute the record in this court, for the purpose of determining its jurisdiction.

What has been said above is on the assumption that these briefs should have been made a part of the return of the court below. But if these plaintiffs understand the decisions and practice of this court, this court does not confine itself to the technical return from the court below as the basis of determining whether or not this court has jurisdiction. To determine this question it will go outside of the return from the court below, so that even if this court should hold that these briefs were not technically a part of the record in the court below, and need not therefore have been made a part of the return, still this court will look into such papers as may aid it in this regard—for instance, the affidavit of the circuit judge—if properly brought before it. This motion, therefore, to have these briefs and this affidavit stand as part of the record in this case for the purpose of determining jurisdiction, would seem to be proper.

For this court has always claimed, and exercised, the right to determine for itself what shall be admitted into the record in this court as tending to show what federal rights were claimed in the state courts, and how it was done. In Murdoch vs. Memphis, 20 Wall., 590, Judge Miller said (p. 633):

> "It is probable that in determining whether one of those questions was actually raised and decided in the state court, this court has been inclined to restrict its inquiry too much by this express limitation of the inquiry 'to the face of the record'; what was the record of a case was pretty well understood as a common law phrase at the time that statute was

enacted; but the statutes of the states and new modes of proceedings in those courts have changed and confused the matter very much since that time."

And goes on to say that because of these changes it has become necessary to take new methods of determining what was decided, enumerating among other things the opinion of the state court and the certificate of its chief justice and in the same opinion (p. 615) Judge Miller further says:

> "To this has been added the further suggestion that in determining whether the question on which the jurisdiction of this court depends, has been raised in any given case, *we are not limited to the record which comes to us from the state court—the record proper of the case as understood at common law—but we may resort to any such method of ascertaining what was really done in the state court as this court may think proper, even to ex parte affidavits.*"

This court has always held that when anything has transpired by reason of which jurisdiction in this court is terminated, such matter should be brought before it by evidence outside of the record proper.

Lord vs. Veazie, 8 How., 250.

California vs. San Pablo, etc., Ry. Co., 149 U. S., 308-314.

Mills vs. Green, 159 U. S., 651, 653.

Little vs. Bowers, 134 U. S., 547.

Allen vs. Georgia, 166 U. S., 138.

And after the analogy of these cases, this court seems to hold in other cases that such evidence outside of the record proper will be admitted in any case where the admission of such evidence might determine the action of this court.

In Dakota County vs. Glidden, 113 U. S., 222, the syllabus is:

> "Evidence of facts outside of the record, and affecting the proceeding of the court in a case on error or appeal, will be received and considered, when deemed necessary by the court for the purpose of determining its action," the court said, (page 225) "But this court is compelled, as all courts are, to receive evidence *dehors* the record affecting their proceeding in a case before them on error or appeal."

In Elwell vs. Fosdick, 134 U. S., 500, this court (p. 513) cites and approves the above language from Dakota County vs. Glidden.

In Kimball vs. Kimball, 174 U. S., 158, this court uses this language (p. 162):

> "From the necessity of the case, this court is compelled, as all other courts are, to allow facts which affect its right and its duty to proceed in the exercise of its appellate jurisdiction, but which do not appear upon the record before it, to be proved by extrinsic evidence (citing Dakota County vs. Glidden and Mills vs. Green, supra). The reasons are quite as strong, to say the least, for applying the rule to a writ of error to a state court, on which the jurisdiction of this court is limited to federal questions only, as to a writ of error to a circuit court of the United States, on which the jurisdiction of this court extends to the whole case. The rule was applied to a writ of error to the court of errors and appeals of the state of New Jersey in Little vs. Bowers, 134 U. S., 547."

In determining this jurisdictional question, this court in Des Moines Navigation, etc., Co. vs. Iowa Homestead Co., 123 U. S., 552, actually examined the records and briefs in other cases and the briefs, in the case at bar, used in the court below. This is recited in the syllabus, which is as follows:

> "The supreme court of the state of Iowa, in deciding this cause, held, and so stated in its opinion, that the question of prior adjudication of the issue by this court in Homestead Valley vs. Railway Co., 17 Wall. 153, was not raised before it by counsel for defendant, and therefore was not in the case; and it decided the case without considering that point. On examining the opinion of that court, and the record and briefs, and the briefs in the court below in this case and in the case of Litchfield vs. Goodnow, ante, 549, this court is of opinion that the point was raised and discussed in the supreme court of Iowa, and holds that the action of that court in respect to it was equivalent to a denial of the federal right so set out."

Under the practice of this court, therefore, as understood by your petitioners, in order to determine clearly the question of jurisdiction, this court will admit in some way into the record before it for its examination—

(a) These two briefs filed by plaintiffs on the several appeals in the court below, whether or not they are a technical part of the record in the state court.

(b) The affidavit of A. J. Vinge (Ex. B), the judge of the circuit court who made the order overruling the demurrer for the purpose of showing, and as the *only* method of showing, that these petitioners claimed the federal right at the very inception of their case.

(c) The certified copy of rule IX. as showing how assignments of error and the claims of legal rights are to be presented to the supreme court of Wisconsin.

(d) A copy of rule XVIII. requiring such briefs to be filed with the clerk of that court.

(e) The affidavit of Fred. W. Reed (Ex. C), which simply places in a short form for printing in the record here the exact words in which the federal right was claimed in the said briefs and the exact words of the assignments of error which are set out in the brief filed on the final appeal in the state court.

Respectfully submitted,

W. E. Hale, FRED. W. REED,

Attorney for Petitioners and Plaintiffs in Error.

No. 180.

Brief on Motion for Leave

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1914.

Folios 6,990 to 2.

T. FINNEY, as Receiver, et al.,

Plaintiffs in Error,

vs.

MARY A. GUY, etc.,

Defendant in Error.

ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

BRIEF ON BEHALF OF PLAINTIFFS IN ERROR.

FRED. W. REED,
For Plaintiffs in Error.

(18,296)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM. 1902.

No. 443.

A. C. FINNEY, as Receiver, et al.,

Plaintiffs in Error,

vs.

MARY A. GUY,

Defendant in Error.

On Writ of Error to the Supreme Court of the State of Wisconsin.

BRIEF OF PLAINTIFFS IN ERROR.

NOTE.—The figures in brackets refer to the indented numbers in the transcript; other references are specified.

STATEMENT OF THE CASE.

The Farmers and Merchants State Bank was a banking corporation organized under the Constitution and statutes of Minnesota on the 6th day of January, 1888, and carried on a general banking business at the city of Minneapolis, in that state, up to June 20th, 1893, on which day, being insolvent, it made an assignment in insolvency for the benefit of creditors under the state law. At that time the bank owed the plaintiffs in error (aside from A. C. Finney, who is joined here as receiver appointed as below mentioned) the sum of $91,255.84. The entire net proceeds of the estate of the bank were $12,539.95, and the state of Minnesota, whose claim was $28,219.98, being under the laws of Minnesota a preferred creditor, such entire proceeds were applied on its claim, leaving a large balance and the entire claims of all other creditors unpaid. The capital stock of the bank was $75,000.00, and under the laws of Minnesota each stockholder is liable to

the creditors of the bank to double the amount of his stock in addition to the subscription price of the same. An action was commenced in the district court of Hennepin county, Minnesota, in January, 1894, in behalf of all creditors of said bank who should come into such action and against all the stockholders, to enforce this liability. The bank and the assignee of the bank were also parties defendant. As provided by said laws, an order was made requiring all creditors of the bank to join in said action within six months, and excluding all others from any participation in the proceeds of such action. The plaintiffs in error (aside from Finney) all joined in said action and no others. Judgment was duly entered in said cause on April 28th, 1897, in favor of plaintiffs and against each stockholder personally brought into the action, for his maximum liability and against the bank for the aggregate sum of $106,471.71, and specifying the amount due each one of the plaintiffs separately. It was provided further in said judgment that Finney should, by a formal order thereafter to be entered, be appointed receiver (51) for the purpose of collecting and enforcing the respective liabilities of the stockholders, and be empowered to proceed against stockholders in other jurisdictions to enforce their liability. Such formal order was duly made. (Exhibit A, 54-58.) By this order said Finney was given full power and discretion to proceed against and enforce the liability of non-resident stockholders against whom no personal judgment could be obtained in Minnesota, as well as to collect said judgment already obtained and to distribute all proceeds so obtained among all the said creditors pro rata to their respective claims. The receiver qualified and proceeded to collect such judgment, but most of such judgments were wholly worthless, and the total amount he was able to collect from such judgments and from the non-resident stockholders, other than this defendant Guy, was less than $13,500.00. The total liability of all non-resident stockholders was $25,000.00, and of this amount $16,000.00 of such liability had been enforced or settled. At the time of the commencement of this action there was due plaintiffs more than $100,000.00 on said judgment against the bank on which nothing could ever be collected or realized, except such sum as could be obtained from the remaining $9,000.00 liability of non-resident stockholders, including that of defendant here, of which sum her liability is $3,800.00. At the time of the bank becoming insolvent defendant Mary A. Guy held 19 shares of stock. During all the times in question she was a resident of the state of Wisconsin.

In March, 1899, this action was commenced in the circuit court of Pierce county to enforce this liability. The receiver Finney joined with him, as parties plaintiff, all the creditors appearing in the Minnesota suit, and in the complaint all the foregoing facts were duly set out. (31-59.) Defendant demurred to this complaint (60) on the ground, among others, that it does not state facts sufficient to constitute a cause of action. The circuit court filed its order entered July 1st, 1899, overruling this demurrer (64); the defendant appealed to the supreme court (67). The Wisconsin supreme court, on March 20th, 1900, reversed the order on the ground (94) "that the complaint fails to state a cause of action that can be entertained by the courts of this state," and directed (94) that the same be remanded to the circuit

court, "for further proceedings according to law." Justice Dodge dissented. January 8th, 1901, said demurrer was again brought on for hearing in the circuit court, and the court entered its order sustaining the demurrer and dismissing the action (102), and on March 27th, 1901, judgment of dismissal was entered on said order (106). Plaintiffs appealed from such judgment (20), and on September 24th, 1901, judgment was entered in the supreme court of Wisconsin affirming the judgment of the circuit court (110). On September 28th a writ of error was allowed by the chief justice of said court (6) to said judgment, and the case brought here.

The clerk of the supreme court of Wisconsin transmitted here with his return a certified copy of the brief of plaintiffs in error on each of the appeals to that court, the first marked "*Respondents' Brief*" and the second "*Appellants' Brief*," also a certified copy of the rules of said court requiring such briefs to be filed and to state among other things "the several errors relied upon for reversal," and "the principles of law applicable to the case, and the authorities in support of the same;" also an affidavit of the attorney for plaintiffs in error and an affidavit of the circuit judge, but refused to make any of said papers a part of his return. On January 20th, 1902, plaintiffs in error submitted to this court in print a motion for certiorari to complete the record by having such papers made a part of same. On January 27th, the court announced that the consideration of such motion was postponed until the record was printed. The record was then printed, and on February 24th, 1902, said motion for certiorari was granted "without prejudice." The affidavits and rules referred to were printed in full on the motion for certiorari. After such motion was granted 12 additional copies of said "Respondents' Brief" and 11 copies of said "Appellants' Brief," with an affidavit of the attorney that said copies were all that could now be produced, were duly filed with the clerk of this court.

ASSIGNMENT OF ERRORS.

The plaintiffs in error respectfully submit that the supreme court of Wisconsin erred in the judgment rendered in this:

1. That is denies plaintiffs a right given by Sec. 1, Art. IV., of the Constitution of the United States, which reads:

> "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof."

And the following statute passed in pursuance thereof, to-wit:

> Revised Statutes of the U. S., Sec. 905: "The acts of the legislature of any state or territory, or of any country subject to the jurisdiction of the United States, shall be authenticated by having the seals of such state, territory, or country affixed

thereto. The records and judicial proceedings of the courts of any state or territory, or of any such country, shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with the certificate of the judge, chief justice, or presiding magistrate, that the said attestation is in due form. And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the state from which they are taken."

2. That its decision and judgment is contrary to Sec. 1, Art. IV., of the Constitution of the United States, and to Sec. 905 of the Revised Statutes of the United States, in that it does not give full faith and credit to the public acts, records and judicial proceedings of the state of Minnesota, and does not give to the public acts, records and judicial proceedings of the state of Minnesota such faith and credit as they have by law and usage in the courts of the state of Minnesota.

3. In holding and deciding that to refuse to enforce plaintiffs' right of action in the courts of Wisconsin, is not violative of Sec. 1, Art. IV., of the Constitution of the United States and Sec. 905 of the Revised Statutes of the United States, which provides that the public acts, records and judicial proceedings of every state shall have such faith and credit given them in every court within the United States as they have by law or usage in the courts of the state from which they were taken.

General status of the law as to enforcing this liability against stockholders in foreign jurisdictions.

This question has been frequently before the courts of late years, and the general principles to govern in such cases established by many decisions. The leading cases and the main propositions here in point are these. Such provisions as those of the Minnesota Constitution are not merely directory to the legislature, but themselves declare and fix a liability and are self-executing.

Willis vs. Mabon, 48 Minn. 150.
Whitman vs. Bank, 176 U. S. 559.

The liability, however, whether depending on the constitutional provisions as well as statutes or on statutes alone, is, though statutory in its origin, contractual and not penal, in its nature.

Pinney vs. Nelson, 183 U. S. 144.
Whitman vs. Bank, 176 U. S. 559, supra.
Bagley vs. Tyler, 43 Mo. App., 195.
Dennis vs. Court, 91 Cal. 548.
Hodson vs. Cheever, 8 Mo. App. 318.
Guerney vs. Moore, 131 Mo. 650.
Tinker vs. Van Dyke, 1 Flip (U. S.) 521.
Hawthorne vs. Calef, 69 U. S. 10.
Hobart vs. Johnson, 19 Blachf., 359.
Flash vs. Conn., 109 U. S. 371.
Western Nat'l Bank vs. Lawrence, 117 Mich. 669.

Howarth vs. Angle, 162 N. Y. 179.
Bell vs. Farwell, 176 Ill. 489.
Western Nat'l Bank vs. Reckless, 96 Fed. 70.
Coleman vs. White, 14 Wis. 762.
Gianella vs. Bigelow, 96 Wis. 185.
Rehbein vs. Rahr, 109 Wis. 137.
First Nat'l Bank vs. Gustin, 42 Minn. 327.
Hencke vs. Twomey, 58 Minn. 550.
Hanson vs. Davison, 73 Minn. 454.
Evans vs. Nellis, 101 Fed. 920.
Deweese vs. Smith, 106 Fed. 438.
Brown vs. Hitchcock, 36 Ohio St. 667-678.
Judson vs. Stewart, 7 Ohio N. P. Rep. 160.
Concord Bank vs. Hawkins, 174 U. S. 365, 372.
Howarth vs. Lombard, 175 Mass. 570.
Kirtley vs. Holmes, 107 Fed. 1.
Western Nat'l Bank vs. Reckless, 96 Fed. 70.
Richmond vs. Irons, 121 U. S. 27.

As regards its enforcement in foreign jurisdictions there is no essential difference between this liability and the liability for assessments for unpaid subscriptions for stock.

Howarth vs. Angle, 162 N. Y. 179-187.
Howarth vs. Lombard, 175 Mass. 570.
Whitman vs. Bank, *supra.*
Hancock Bank vs. Farnum, 146 U. S. 640.
Holland vs. Duluth, 65 Minn. 324.
Hanson vs. Davison, 73 Minn. 454.

The right to enforce this liability is not a mere matter of comity, but it is a right under the general principles of jurisprudence to enforce a contract.

Dennick vs. Railroad Co., 103 U. S. 11.
Western Nat'l Bank vs. Reckless, 96 Fed. 70.
Morawetz on Corp., Sec. 875.
Western Nat'l Bank vs. Lawrence, 117 Mich. 669.
Judson vs. Stewart, 7 Ohio N. P. Rep. 160.
Bell vs. Farwell, 176 Ill. 489.
Bank vs. Gustin, etc., Co., 42 Minn. 327.

The construction of the statute by the home court is binding on all other courts.

Cargill Co. vs. Minnesota, 21 Sup. Ct. Rep. 423.
Howarth vs. Lombard, 175 Mass. 570.
Hancock Nat'l Bank vs. Farnum, 176 U. S. 640.
Rice vs. Libbey, 105 Fed. 825.
Hancock Nat'l Bank vs. Ellis, 166 Mass. 414-418.
Brunswick Terminal Co. vs. Nat. Bank, 99 Fed. 635.
Bank vs. Rindge, 57 Fed. 279.
Rhodes vs. Bank, 66 Fed. 512.
McVicar vs. Jones, 70 Fed. 754.
Bank vs. Benson, 106 Wis. 624.

The proceedings in the home court are "binding on stock holders who are not before the court otherwise than by virtue of their membership in the corporation."

Childs vs. Cleves, 95 Me. 498.
Hancock Nat. Bank vs. Farnum, *supra.*
Howarth vs. Lombard, 175 Mass. 570.
Sheafe vs. Larimer, 79 Fed. 921.
Howarth vs. Ellwanger, 86 Fed. 54.
Hanson vs. Davison, 73 Minn. 454.
Holland vs. Duluth Co., 65 Minn. 324.
Town of Hinckley vs. Ry. Co., 80 Minn. 32.
Gaw vs. Glassboro N. Y. Co., 20 Ohio C. C. 416.
Dexter vs. Edmands, 89 Fed. 467.
Hawkins vs. Glenn, 131 U. S. 319.
Hale vs. Hardon, 95 Fed. 747.

This does not mean that it is conclusive against any stockholder that he is such, or that he has not discharged his liability, or that he has not offsets against the claim, but he is so far a part of the corporation that it is in other respects an adjudication against him.

Bank vs. Farnum, *supra.*
Hanson vs. Davison, *supra.*

Where the home court has thus construed the nature of the liability, and determined such to be the effect of the proceedings there, to refuse to give the same effect to such contract and proceedings in the courts of another state is contrary to the Constitution and Laws of the United States.

Huntington vs. Attrill, 146 U. S. 657.
Bank vs. Farnum, *supra.*

Under these decisions plaintiffs in error thus state their position:

1. If the right sought to be enforced has its origin in a self-executing provision of the state constitution, such right is transitory and is enforceable anywhere, and if the statute of the state does not provide a method of enforcement, the courts will enforce this right in any jurisdiction under the general principles of equity.

2. When the right is secured by statute alone, the liability, though statutory in its origin, is contractual in its nature, and enforceable as a contract.

3. When the stockholder purchases his stock he enters into a contract of liability under the constitution and statutes of the home state of the corporation, and thus he gives the creditors of such corporation a substantive right of action on contract, transitory in its nature, and enforceable anywhere that jurisdiction can be obtained of the stockholder, unless there is some provision in the statutes of the home state which confines the remedy to that jurisdiction alone.

4. Whether or not such right of action is transitory, and therefore enforceable anywhere, is determined by the interpretation of such contract as made by the court of last resort in such home state, and such determination by such court is conclusive, and binding upon all other courts in actions brought thereon, even if such other courts have given, or would give, a different interpretation to the same constitution and statutes.

5. Where such interpretation by the home court has been placed upon such contract, for a court in another jurisdiction to refuse to enforce such liability on the ground that the remedy is confined to the original action in the home state, is contrary to the constitution and laws of the United States, in that it denies full faith and credit to the public acts, records and judicial proceedings of such home state.

6. The supreme court of Minnesota has decided this constitutional provision to be self-executing and that the right of action under its laws and constitution to enforce this liability is a substantive right of action on contract, transitory in its nature, and of such a nature that its enforcement is not confined to the courts of that state or to the original action there brought, but that the judgment entered in such original action can be enforced by an ancillary action in any jurisdiction where any stockholder not brought into such original action can be found.

7. To refuse therefore to maintain this action in itself denies plaintiffs a right given by Sec. 1, Art. IV. of the Constitution of the United States and Section 905 of the Revised Statutes.

The Minnesota law.

The provision of the Minnesota constitution that fixes the liability of stockholders in banks is paragraph 3 of Sec. 13 of Art. 9, to-wit:

"Sec. 13. The legislature may by a two-thirds vote, pass a general banking law, with the following restrictions and requirements, viz: * * * Third—The stockholders in any corporation and joint association for banking purposes issuing bank notes shall be individually liable in an amount equal to double the amount of stock owned by them for all the debts of such corporation or association; and such individual liability shall continue for one year after any transfer or sale of stock by any stockholder or stockholders."

The provision of the statutes in question, appears unchanged in both the general statutes of 1878 and of 1894, those fixing the liability are these, General Statutes 1894:

"Sec. 2494 (being Sec. 14, Chap. 33, G. S. 1878): The shares in such bank are personal property, and transferable on the books of the bank in such manner as may be agreed upon in the articles organizing such bank, or prescribed in its by-laws; and every person becoming a stockholder therein shall, in proportion to his interest succeed to all the rights, and be subject to all the liabilities of prior shareholders: no change shall be made in the articles organizing such bank whereby the rights, remedies, or securities of existing creditors shall be in any manner impaired; and any association constituting such bank shall not be dissolved by the death or insanity of any one of the shareholders therein.

Sec. 2501 (being Sec. 21, Chap. 33, G. S. 1878): The president and cashier of every bank formed pursuant to the provisions of this chapter, shall at all times keep a true and correct list of the names of all the shareholders of such bank, with the amount of stock held by each, the time of transfer, and to whom transferred, and shall file a copy of such list in the office of the register of deeds of the county wherein such bank is located, and also in the office of the auditor of

state, on the first Monday in January and July in each year; *and the stockholders in each bank shall be individually liable in an amount equal to double the amount of stock owned by them for all the debts of such bank, and such individual liability shall continue for one year after any transfer or sale of stock by any stockholder or stockholders.*

Sec. 3419 (Sec. 414, Chap. 34, G. S. 1878): Persons holding stock in a corporation as executors, administrators, guardians or trustees shall not be personally subject to any liabilities as stockholders; but the estates and funds in their hands shall be liable in like manner and to the same extent as the testator, intestate, ward or person interested in the trust fund would be, if they were respectively living and competent to act, and held the stock in their own names."

And those providing for the enforcement of the liability are these:

"Sec. 5905 (being Sec. 17, Chap. 76, G. S. 1878): Whenever any creditor of a corporation seeks to charge the directors, trustees, or other superintending officers of such corporation, or the stockholders thereof, on account of any liability created by law, he may file his complaint for that purpose in any district court which possesses jurisdiction to enforce such liability.

Sec. 5906 (being Sec. 18, Chap. 76, G. S. 1878): The court shall proceed thereon as in other cases, and, when necessary, shall cause an account to be taken of the property and debts due to and from such corporation, and shall appoint one or more receivers.

Sec. 5907 (being Sec. 19, Chap. 76, G. S. 1878): If, on the coming in of the answer, or upon the taking of any such account, it appears that such corporation is insolvent, and that it has no property or effects to satisfy such creditors, the court may proceed, without appointing any receiver, to ascertain the respective liabilities of such directors and stockholders, and enforce the same by its judgment as in other cases.

Sec. 5911 (being Sec. 23, Chap. 76, G. S. 1878): Whenever any action is brought against any corporation, its directors or other superintending officers, or stockholders, according to the provisions of this chapter, the court, whenever it appears necessary or proper, may order notice to be published, in such manner as it shall direct, requiring all the creditors of such corporation to exhibit their claims and become parties to the action, within a reasonable time, not less than six months from the first publication of such order, and, in default thereof, to be precluded from all benefit of the judgment which shall be rendered in such action, and from any distribution which shall be made under such judgment."

All of these statutes are specifically set out in the complaint (40-42). The section of the constitution is not there specifically set out, but is pleaded only in the general statement of the law of Minnesota as interpreted by its supreme court. The law of Minnesota as determined by that court of last resort under the constitution and statutes is pleaded in these words (43-46):

"That all the stockholders in such banks are liable for all debts of the bank in double the amount of stock held by them respectively in addition to the subscription price of said stock; that the proper method of enforcing such liability is, in the first instance, for a creditor to bring action at the domicile of the corporation, against the corporation and all of its stockholders, over whom jurisdiction can be obtained,

on behalf of all the creditors of such bank who shall come into said action so commenced and that judgment shall be therein entered in favor of each creditor in the amount owing him by said bank, and against each stockholder, over whom the court shall have acquired jurisdiction, in double the amount of stock held by him, but that no more shall be collected therein than is sufficient to satisfy such judgment in favor of said creditors, and that a receiver be appointed in said action to collect said judgment and to distribute the same to said creditors pro rata and also to enforce the liability of stockholders residing in jurisdictions other than that in which said suit is brought; *that the liability of such stockholders is several and not joint and that judgment against only a part of such stockholders does not have the effect of releasing others against whom no judgment was obtained in such action; that such action is not the exclusive remedy, but if any stockholders were omitted from such original action, because the court could not acquire jurisdiction of them, or for any other cause, the liability could be enforced against such omitted stockholders by proceedings against them in an action ancillary to the original action in any jurisdiction in which they might be found, and where they can be served with process; that the obligation of stockholders is not penal in its nature, but is purely contractual, and contains all the elements of a contract and can be enforced as such, and that an action to enforce such liability is an action on contract; that the judgment in such original action, determining the amount of the corporate debts remaining unpaid, is binding on the stockholders whether parties to the action or not; that the judgment against the corporation is in effect a judgment against the stockholders in their corporate capacity, and the stockholders are represented by the corporation in such action; that the decree in such action is a final and conclusive determination of the amount for which the stockholders are liable;* that the stockholders are so liable for all debts contracted both before and after they become stockholders; that all creditors who do not come into such action when required so to do by order under said section 5911 within the time therein allowed, are precluded from all benefit of the judgment, to be rendered, and from any distribution of the proceeds thereunder; *that where a person becomes a stockholder in a corporation organized under the laws of a foreign state he contracts with reference to all the laws of the state under which the corporation is organized, and that such laws become a part of his contract and that his liability as such stockholder may be enforced by creditors wherever they can obtain jurisdiction of the parties;* that in an action to enforce stockholders' liability in a jurisdiction where the corporation is a non-resident corporation, if judgment cannot be obtained against the corporation, such action will be maintained without judgment; that the double liability of stockholders in all banks imposed by section 2501 is not repugnant to the constitution; that the liability of stockholders is not an asset of the corporation and cannot be enforced by the assignee or receiver of the corporation in insolvency, but is a liability direct to the creditors; that it is not necessary for creditors to procure a judgment against the bank before commencing the suit to enforce the stockholders' liability; that liability of stockholders is a primary and principal one and not as surety for the corporation; that the liability of a stockholder survives

his death and is enforceable against his estate whether the corporate indebtedness was incurred before or after his death and whether the corporation became insolvent before or after his death; that he contracts for a liability which is to continue at least until his stock is transferred to another on the books of the company, and that the liability of the estate of a deceased stockholder for corporate debts is not a claim that can be presented to the probate court for allowance, but must be recovered in an action against the stockholders; that shares in such bank are personal property and transferable on the books of the company and every person becoming a stockholder therein shall, in proportion to his interest, succeed to all the rights and be subject to all the liabilities of prior shareholders; that a legatee is liable to an action by a creditor of the testator to recover the value of any legacy received by him, and that an executrix is liable to the amount of property of the estate in her hands."

The specific decisions pleaded are these:

Allen vs. Walsh, 25 Minn. 543.
Harper vs. Carroll, 62 Minn. 152.
Harper vs. Carroll, 66 Minn. 487.
Hanson vs. Davison, 73 Minn. 454.
Olson vs. Cook, 57 Minn. 552.
Danforth vs. National Chemical Co., 68 Minn. 308.
Holland vs. Duluth, etc., Co., 65 Minn. 324.
First Nat. Bank vs. Gustin, etc., Co., 42 Minn. 327.
Rule vs. Omega S. & G. Co., 64 Minn. 326.
Overmire vs. Haworth, 48 Minn. 372.
Dodge vs. M. P. Roofing Co., 16 Gil. 327.
First Nat'l Bank vs. Northern T. Co., 69 Minn. 176.
State vs. Bank of England, 70 Minn. 398.
American S. & L. Ass'n vs. Farmers & M. St. Bk., 65 Minn. 139.
Gebhard vs. Eastman, 7 Minn. 56 (Gil. 40).
Hencke vs Twomey, 58 Minn. 550.
Dent vs. Matteson, 70 Minn. 519.
Hantzch vs. Massolt, 61 Minn. 361.
In Re Martin's Estate, 56 Minn. 420.
Minneapolis B. Co. vs. City Bank, 66 Minn. 441.

ARGUMENT OF THE CASE.

The plaintiffs in error seek a reversal of the Wisconsin supreme court because that court has denied them the right to enforce in the courts of that state a contract solemnly entered into, on the ground that such decision is contrary to the constitution and laws of the United States.

The questions, therefore, presented are:

1. Does this decision deny a federal right?
2. Was such federal right "set up or claimed?"

Does the decision deny a federal right?

The decision denies a federal right if the nature of the cause of action here sought to be enforced is such under the constitution, statutes and decisions of the supreme court of Minnesota that it comes within the decision in Whitman vs. Bank and Bank vs. Farnum. That such is the cause of action appears in three ways: It is so set out in the complaint and admitted by the demurrer; it appears by an examination of the decisions pleaded, and finally it is admitted that such is the case by the Wisconsin court itself in its opinion.

The pleading of the Minnesota law certainly brings this case within the decision of Whitman vs. Bank and Bank vs. Farnum, and by the demurrer it stands admitted, if the pleading is here sufficient, and as to this no question is made.

The Minnesota decisions determine that such is the nature of the cause of action under the Minnesota law, and the doctrine of that court is especially declared in Hanson vs. Davison, 73 Minn. 454.

It seems sufficient at this point to refer to that case and to point out that the Minnesota court has determined that

This Provision of the Constitution is Self-Executing.—Bold Face.

Palmer vs. Bank, 72 Minn. 266-275, holds that this section of the constitution applies to banks of issue and that all banks, at least since 1869, organized under Chap. 33 of the General Statutes, as this bank was (3[illegible]), were banks of issue whether or not they issued circulating notes, and in *Seymour vs. Bank of Minnesota, 79 Minn.* 211-221, that such double liability rested upon all such stockholders under this constitutional provision until the legislature by Chap. 145, Laws 1895, withdrew this right to issue bank notes because of the long continued non-user. On the authority of *Willis vs. Mabon*, 48 *Minn.* 140, and *Whitman vs. Bank, supra*, this provision of the constitution is self-executing, as this last case says, "The words 'shall be secured' are not merely directory to the legislature to make provision for such liability, but of themselves declare it." So here the words "shall be liable" not only do not direct the legislature to make provision for such liability, but specifically declare it and in the opening sentence restricts the legislature from passing any law in derogation thereof. It says the legislature may pass a general banking law, but declares that any such law shall be subject to this here definitely declared liability. It is as the court declares in *Allen vs. Walsh*, 25 *Minn.* 543 (p. 551), a restriction on the power of the legislature. It does not turn the matter over to the legislature to declare a liability, but definitely declares the right and restrains the legislature from passing any law to remove or modify such right as to creditors of banks of issue. It comes then within the definition of Judge Mitchell in *Willis vs. Mabon, supra*, that (p. 150). "If the nature and extent of the right conferred and of the liability imposed is fixed by the provision itself, so that they can be determined by the examination and construction of its own terms, and there is no language used indicating that the subject is referred to the legislature for action, then the provision should be construed as self-executing, and its language as addressed to the courts." The language construed in that case is identical for the purposes of this discussion. In that case it was "each stockholder in any corporation (except manufactur-

ing ones) shall be liable to the amount of stock held or owned by him"; here "the stockholders * * * shall be individually liable in an amount equal to double the amount of stock owned by them for all the debts of such corporation."

The legislature, in section 2501 (40), uses the identical words of the constitution, and even if chapter 76, which provides the method of enforcement, is taken to be a part of the same law as section 2501, yet it is not a part of the constitutional provision. The constitution secures the right, and it was in existence before the statute was passed. In the words of *Whitman vs. Bank* (p. 562), "A failure of the legislature to create courts or prescribe modes of procedure may, it is true, make ineffective this constitutional provision, but it does not destroy the liability; nor is it created by the act of the legislature prescribing the mode of its enforcement. This is the obvious meaning of the constitutional provision."

A further discussion of the Minnesota decisions except in connection with that of the Wisconsin court, seems unnecessary because as before suggested for the purposes of this discussion it is admitted by the demurrer that such is the law, and is also specifically admitted in the Wisconsin opinion.

The opinion of the Wisconsin court.

The statutes of Wisconsin provide (Stat. 1898, Sec. 2410):

"The supreme court shall give their decisions in all cases in writing, which shall be filed with the other papers in the case; and such decisions and all decisions and opinions delivered by the court or any justice thereof in relation to any action or proceeding pending in said court, shall remain in the office of the clerk. Every written opinion or decision of the supreme court which shall have been filed with the clerk shall constitute and be held a part of the record in the action or proceeding in which it shall have been given and filed, and shall be certified therewith to any court of the United States to which such action or proceeding or the record thereof may be in any manner certified or removed."

This court will therefore look into the three opinions returned here in this record, to-wit: 1. Opinion of Judge Marshall on the first appeal (reported in 106 Wis. 256) (76-94). 2. Dissenting opinion of Judge Dodge on the first appeal (reported in 106 Wis. 277) (97, 101). 3. Opinion of Justice Dodge on second appeal (reported in 111 Wis. 296) (111-113); for all of these have by this statute become an actual part of the record for the determining of what federal question was involved or passed upon.

Gross vs. United States Mortgage Co., 108 U. S. 477.

The court first admits that the liability is primary, absolute, and several, and by inference and reference to its own decision that it is contractual, and that the nature of the liability is precisely the same under the laws of Minnesota and Wisconsin.

It then asserts that the Minnesota court decided in Allen vs. Walsh, 25 Minn. 543, that (82) "the remedy, plainly indicated by the legislature, for the enforcement of the liability, is inseparably connected with

it and is exclusive," and that under this decision the complaint states no cause of action for two reasons (82): "1st. The statutory right coupled with the statutory remedy for its enforcement, clearly intended to be presented at the home of the corporation, is not transitory. 2nd. The action in a Minnesota court is a bar to any other action to enforce the liability of stockholders."

But it is useless to point out that the Minnesota court in Hanson vs. Davison, 73 Minn. 454, on p. 459, says that while it did use language in Allen vs. Walsh from which such inferences might be had, that such remedy is *not* exclusive, but that (461) "This statute presents the exclusive remedy only to the extent that an equitable action of the character therein indicated must be first instituted for the enforcement of the liability of stockholders," and that such action is not a bar, but that (p. 461) "There is nothing in the statute which justifies the conclusion that if a stockholder's liability is not enforced in the original action because he is a non-resident, an ancilliary action may not be brought against him alone after the amount for which stockholders are individually liable has been determined in the original action," or to discuss other Minnesota cases as determining the same position for the Wisconsin court specifically admits all this and says, (87): "It is contended that, admitting the rule above discussed—that where a statutory right is created, coupled with a specific remedy to enforce it, such remedy is exclusive and cannot be pursued outside the home jurisdiction, as indicated in May vs. Black, it does not apply here, because we are dealing with a Minnesota law, and the supreme court of that state, in Hanson vs. Davidson, *supra*, has decided that the statutory remedy given there to enforce the liability under consideration, is only exclusive so far as it goes, that it requires an original action, by a creditor or creditors, in behalf of all persons so circumstanced who shall come into the action against all the stockholders of the bank within the jurisdiction of the court, and that the liabilities of all such stockholders must be there enforced, and the indebtedness of the corporation forming the basis therefor and for any action that may thereafter be brought in aid of the statutory action determined; that the statutory remedy does not preclude the institution and prosecution of ancillary action to reach stockholders, either in the home or other jurisdictions, that cannot be reached in the first instance, and that such stockholders by such actions may be pursued in any jurisdiction in Minnesota where they can be found, and in any foreign jurisdiction where the court will permit it. *Such is the state of the law as it now exists in Minnesota.*"

The Wisconsin court then goes on to say that the Minnesota court is wrong in its interpretation of Allen vs. Walsh, for Allen vs. Walsh and all the succeeding cases hold literally that the original action is the exclusive remedy and when the Minnesota court says in the Hanson case that such original action is not a bar and (89) "does not go so far as to preclude the institution and prosecution of an action ancillary to the principal action, against those who cannot be brought in in the first instance," it overturns "twenty years of established law at home and runs counter to the decisions of this and all other states where similar laws exist."

Again, that in order to sustain this new doctrine "arbitrarily grafted on to the existing system" that other actions may be brought in the home and other jurisdictions to enforce the liability as to those not originally brought in (90), "it became necessary to hold that the result in the first action, as to all questions necessarily there litigated, is binding not only on all persons made parties to such action, but all so circumstanced that they might have been made parties could they have been found within the jurisdiction of the court, and on all parties that might have been admitted as participants in the action upon their own application," with the result that some have their day in court, some are bound without that privilege, and those who come in have the equities between them adjusted, while the others do not, and that (92) "While the statutes of Minnesota as thus construed by its court are supreme in that state, their effect here depends upon the law of comity." And, citing from the dissenting opinion in Hale vs. Hardon (92), "that the decision in Hanson vs. Davison is so out of harmony with the previously established doctrine of the Minnesota court and with elementary principles, and so subversive of the rights of parties equally interested in a controversy to an equality of remedies, and to the right of every person to his day in court as to every material question involving his interest, that there is no rule of comity which requires or justifies its recognition in any other jurisdiction."

And "to give effect to the Minnesota statutes as now construed by its highest tribunal, would be unjust to the defendant, because it would, in effect, make a liability enforceable here that was not enforceable when it accrued and that could not have been enforced under the law of Minnesota as it existed prior thereto during the time the defendant was a member of the corporation," and after reciting the results that would follow says, (93) "For these and many other reasons that might be named *the law of Minnesota, as at present understood, should not be made effective here.*" The necessity of comity between states, and of a liberal policy in enforcing the laws of other states is then recognized and the opinion closes with these words "The conclusion reached is, that the complaint fails to state a cause of action *that can be entertained by the courts of this state,* and that the decision of the lower court to the contrary must be reversed, and the cause remanded for further proceedings according to law."

Now, as noted by the Wisconsin court, the Wisconsin law is identical with the Minnesota law and under it the court has always held that this liability is contractual, Coleman vs. White, 14 Wis. 762; Gianella vs. Bigelow, 96 Wis. 185, supra. It says at the beginning of this opinion that it is primary and absolute. It says again in Eau Claire Bank vs. Benson, 106 Wis. 624, (on pg. 629) referring to the Minnesota law, "that the added liability of stockholders is primary, contractual and absolute" and again under their own decisions in Rebbein vs. Rahr, 109 Wis. 136, that the liability of a stockholder in a bank is "strictly and distinctively contractual" (p. 140), and again (p. 151) "Substantially all courts, as above stated, have declared this statutory liability to be primary and absolute, a contract debt from each stockholder for which any creditor might sue and recover in full," that the liability is not as between creditors and stockholders, ratable or

proportionate, but limited only by the amount of his stock and the amount of the unpaid debts, it is primary and absolute and (p. 152) "The liability as between the stockholder and creditor is none the less several because, as between stockholders, it is proportional, nor because, as between creditors, the participation is *pro rata.*"

The Wisconsin court then is refusing to enforce a liability which it admits is primary, absolute, several, and contractual, solely because it holds that the original equity proceeding is a bar to this ancillary action. At the same time it admits that the Minnesota court has so interpreted its law that such former action is *not* a bar to this action. It says that the complaint under the Minnesota law as interpreted by the Minnesota court, states a cause of action, but "for the reasons assigned we refuse to give the same effect here," for to do so "would give effect to a law which is contrary to the policy of the law of this state."

This decision is then brought within the decisions of this court in Huntington vs. Attrill, 146 U. S. 657, and Bank vs. Farnum. In the Huntington case the action was brought in Maryland to enforce there a judgment recovered in New York against Attrill as a stockholder and director of a corporation. A demurrer to the bill was overruled by the lower court, but the court of appeals decided that the judgment was recovered for a penalty and not on contract (70 Md. 191) and concluding (p. 199) "It appears to us that the complainant has no cause of action, which can be maintained in this state," reversed the order overruling the demurrer and dismissed the bill. But this court said the cause of action was not penal in the international sense reversed the Maryland court and said (p. 685) that when judgments of a sister state were duly pleaded and proved "they have the effect of being not merely *prima facie* evidence, but conclusive proof, of the right thereby adjudicated; and a refusal to give them the force and effect in this respect, which they had in the state in which they were rendered, denies to the party a right secured to him by the constitution and laws of the United States."

The case of Bank vs. Farnum is exactly with the case at bar on the facts. The action was brought in Rhode Island to enforce against a stockholder there his liability to pay a judgment rendered against a Kansas corporation in the United States court for the district of Kansas. A demurrer to the declaration was sustained in the lower court. On appeal (20 R. I. 466) the supreme court stated the claim presented on the appeal to be this (p. 468): "The law is construed in Kansas to constitute a contract; full faith and credit must be given to this construction, as a judicial proceeding in other states; hence the plaintiff is entitled to enforce in this state the liability of a stockholder in a Kansas corporation, as on a contract."

That court then said that the provisions of the federal constitution relates to statutes and decrees. It is these and not the opinions of courts and least of all a dictum of courts that are to have due faith and credit. It then construes the opinions of the Kansas court to be a dictum on this point, but held that even if the opinion of the supreme court of Kansas is that the relation of a stockholder to creditors is contractual, it is not binding, for it is not a judgment, and the pleading of the statute and such opinions does not set out a contract. It then construes

the Kansas law for itself and holds it does not constitute a contract and therefore (p. 471) "that the declaration does not state a contract under the laws of Kansas as construed by the decisions of the supreme court of that state to which we have been referred, nor by our own construction of it," and concludes, "The statutes of a state do not operate beyond its own limits, and comity between states does not require that one state should enforce the statutory provisions of another state which are contrary to the policy of its own laws."

It therefore sustained the demurrer and judgment was entered thereon.

On writ of error to this court (176 U. S. 640), this court in reversing the state court, refers to Whitman vs. Bank, 176 U. S. 559, where it had just decided, upon a review of the Kansas law, that the nature of this liability, though statutory in its origin is contractual in its nature and that an action thereon can be maintained in any court of competent jurisdiction, whether federal or state, and declares that the congressional declaration of the effect to be given to the records and judicial proceedings of one state in the courts of another state in the words of Sec. 905 is that they "shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the state from which they are taken."

In other words, says, this court, the local effect must be recognized everywhere through the United States. It then inquires what is the effect given to the proceedings by the Kansas courts, and answers (p. 643), "This is a question not answered by referring to general principles of law, by determining what at common law was the significance and effect of a judgment, but can be answered only by an examination of the decisions of the courts of Kansas. The law and usage in Kansas, prescribed by its legislature and enforced by its courts, make such a judgment not only conclusive as to the liability of the corporation, but also an adjudication binding each stockholder therein. We do not mean that it is conclusive as against any individual sued as a stockholder that he is one, or if one, that he has not already discharged by payment to some other creditor of the corporation the full measure of his liability, or that he has *not* claims against the corporation, or judgments against it, which he may, in law or equity, as any debtor, whether by judgment or otherwise, set off against a claim or judgment, but in other respects it is an adjudication binding him. He is so far a part of the corporation that he is represented by it in the action against it," and concludes (p. 644): "Now, as the judgment rendered in the Kansas court is in that state not only conclusive against the corporation, but also binding upon the stockholders, it must, in order to have the same force and effect in other states of the Union, be adjudged in their courts to be binding upon him, and the only defenses which he can make against it are those which he could make in the courts of Kansas. *The question to be determined in this case was not what credit and effect are given in an action against a stockholder in the courts of Rhode Island to a judgment in those courts against the corporation of which he is a stockholder, but what credit and effect are given in the courts of Kansas in a like action to a similar judgment there rendered.* Thus and thus only can the full faith and credit prescribed by the Constitution of the United States and the act of Congress be secured."

As applied to the case at bar, these proceedings must be given in the Wisconsin courts the same force and effect they have in the courts of Minnesota. They are not given such effect in this decision. The Wisconsin court itself so declares. It is therefore in violation of the constitution and laws of the United States. The case at bar is clearer than the Farnum case, for here the Wisconsin court *specifically admits* that if the proceedings were to be given the same effect they have under the Minnesota law the complaint states a good cause of action, in the Wisconsin courts, but solely because the Wisconsin court refuses to give them such effect no cause of action is stated. The decision of the Wisconsin court is equally in conflict with Whitman vs. Bank, and Bank vs. Farnum, and denies plaintiff in error a right secured by the federal constitution and laws.

This is none the less the case, though no federal question is specifically mentioned or discussed as such in the opinion, as this court has frequently said in

Crowell vs. Randell, 10 Pet. 367.
Furman vs. Nichol, 8 Wall. 44.
Murdock vs. Memphis, 20 Wall. 590.
Kaukauna Co. vs. Green Bay, etc., Canal, 142 U. S. 254.

and many other cases discussed below on the question of jurisdiction where this court has gone so far as to say that a federal right is denied, if that is the result of the decision, even though the state court states in its decision that there is no federal question involved, as in Missouri, K. & T. R. Co. vs. Elliott, 184 U. S. 530.

The reasons given by the Wisconsin court.

The reasons given by the Wisconsin court are not satisfactory. In the words of Justice Dodge in his dissenting opinion (97), "The decision in this case seems to me to destroy a clear and absolute right by denying any remedy for its enforcement, and that, too, for no better reason than mere inconvenience to courts in their procedure, an inconvenience which seems to me rather imaginary than real. This is a result which is not to the credit of the courts and should not be reached without a struggle to avert it." The reasons for its decision are thus formulated by the Wisconsin court: *The statutory right, coupled with the statutory remedy for its enforcement, clearly intended to be presented at the home of the corporation, is not transitory.* But whether or not it is transitory is a question of the nature of the contract of liability, to be determined by the Minnesota court, and that the Minnesota court has so determined the Wisconsin court admits. Besides as is pointed out by the Minnesota court in Hanson vs. Davison, while the general action on behalf of all creditors is the exclusive remedy in the *first instance*, so that no other remedy can be used until this has been had, it does not at all follow that when such proceedings have been had and a decree therein obtained fixing the amount due from the bank to creditors who have come into the action and determining, as here, the amount of such debts that must be paid by the stockholders, that an action cannot be begun ancillary thereto to enforce said decree as against a stockholder who was not personally served in said action and against whom no personal judgment could be therein obtained. The

difference between entertaining such original suit in a foreign jurisdiction and an action in such jurisdiction to enforce the decree in the home jurisdiction has been frequently pointed out by other courts, for instance, in Howarth vs. Lombard, 175 Mass. 570; and in Tuttle vs. Bank, 161 Ill. 497. In this last case the court refused to entertain such original suit, but said when such proceedings had been had in the home court, they would be enforced against the local stockholder. Since the binding force of the decree obtained in such proceeding is recognized by the Minnesota court in Hanson vs. Davison and in Holland vs. Duluth Co., 65 Minn. 324, and by this court in the Whitman case and the Farnum case to be the same as in the case of an action to enforce an assessment for unpaid subscription to stock, one might as well say that no such assessment can be enforced against the local stockholder because the assessment made by the court having jurisdiction over the corporation is the exclusive remedy. Besides as above pointed out the liability does not originate in the statute, but in a self executing provision of the constitution which preceded it. Then, since it appears that the right here sought to be enforced is not created by the statute, even if it could not have been enforced without the statute, it does not for that reason come within the proposition that where a statute creates a new right and couples with it a remedy, that remedy is exclusive. Hanson vs. Davison even holds that this statute is not necessary for the remedy, but (p. 461) "If chapter 76 were repealed, equity would find an adequate remedy."

An examination of the statute itself by its own terms and as interpreted by the Minnesota court determines in fact that no new or exclusive remedy is therein provided (Sec. 5905) "Whenever any creditor of a corporation seeks to charge * * * the stockholders on account of any liability created by law, *he may file his complaint for that purpose in any district court which possesses jurisdiction to enforce such liability.*"

(Sec. 5906) "*The court shall proceed thereon as in other cases* and when necessary shall cause an account to be taken of the property, and debts due to and from such corporation, and shall appoint one or more receivers."

(Sec. 5907) "If * * * it appears that such corporation is insolvent and that it has no property or effects to satisfy such creditors, the court may proceed without appointing any receiver, to ascertain the respective liabilities of such directors and stockholders and enforce the same by its judgment *as in other cases.*"

Olson vs. Cook, 57 Minn. 552, is an action exactly like the original action, in the home court, in the case at bar. The court decides, 1, that an action may be brought under Chap. 76 to sequester the corporate assets of the bank and incidentally to enforce the statutory liability of the stockholders. 2. That an action may be brought to enforce the statutory liability and incidentally to sequester the corporate assets. But, 3, if the corporate assets have been put in the way of sequestration for the payment of debts by an assignment in insolvency, an action can be commenced for the sole purpose of enforcing the liability of the stockholders. That is the case at bar as pursued in the home jurisdiction, while the complaint here shows that such action did not go to judgment until after the entire assets of the corporation had

been applied toward its preferred debt to the state of Minnesota (33). In Northwestern Railroader vs. Prior, 68 Minn. 95, the court held the provisions of Chap. 76 are broad enough to allow a recovery for bonus stock in the same action, and said (p. 99) citing from Arthur vs. Willius, 44 Minn. 409: "In short, the proceedings are intended to be so elastic as to be susceptible of development during their successive stages of progress, as to reach not only all the corporate assets, but also all liabilities of stockholders and others so far as necessary for the payment of creditors."

In Oswald vs. Minneapolis Times Co., 65 Minn. 249, Justice Mitchell said (p. 254), "proceedings under chapter 76 being essentially equitable, as well as extremely flexible, in their nature, there is no difficulty in working out and enforcing through them the rights and liabilities, both legal and equitable, of all creditors and stock holders."

In McKusick vs. Seymour, Sabin & Co., 48 Minn. 158, Justice Mitchel said again (p. 170): "It is entirely consistent with the established equity jurisdiction, and in accordance with established equity practice, to forestall a multiplicity of actions by bringing all the litigation into its grasp in one suit for a general accounting and a complete adjustment of all rights."

In Pioneer Fuel Co. vs. St. Peter St. Imp. Co., 64 Minn. 386, the court held that in such action a cross bill would be allowed on application to enforce additional rights after the analogy of the equity practice.

In National N. H. Bank vs. Northwestern G. L. Co., 61 Minn. 375, the court said (p. 392): "In such case an action at law is not a proper remedy, or any action by a part of the creditors against a part of the stockholders, but a bill in equity should be brought by or on behalf of all the creditors against all the stockholders. Though not thus stated, this rule is applied in Allen vs. Walsh, 25 Minn. 543, Johnson vs. Fischer, 30 Minn. 173, McKusick vs. Seymour, Sabin & Co., 48 Minn. 158." And in Harper vs. Carroll, 66 Minn. 487, in paragraph 19 (p. 508), the court describes the action not as a special remedy, but as one that from the nature of the result to be attained, must be controlled by the ordinary rules of acourt of equity. It thus appears that the Minnesota court is announcing no new doctrine when it declares in Hanson vs. Davison (p. 461) that "The remedy for enforcing the liability must, in the first instance, from the nature of the liability, be an equitable action. G. S. 1878, c. 76 (G. S. 1894, c. 76) indicates and regulates to some extent the remedy, leaving to the court the duty of making the remedy effectual by an application of the principles of equitable procedure. *This statute prescribes the exclusive remedy only to the extent that an equitable action of the character therein indicated must be first instituted for the enforcement of the liability of stockholders.*"

Such decisions as Pollard vs. Bailey, 20 Wall, 520; Bank vs. Franklyn, 120 U. S. 747, and others cited by the Wisconsin court, only apply when an attempt is made to enforce the liability of a stockholder in a foreign jurisdiction before the required proceedings in the home court have been had. Each of these two cases named was an action at law by a single creditor against a single stockholder in a foreign jurisdiction to recover from such stockholder for the benefit of such creditor alone. In each case the home statute prescribed a method, by a general

action to enforce the liability of all stockholders for the benefit of all creditors. In neither case had such proceedings been had. The decision in each goes no further than to say such action would not be maintained, until such proceedings in the lower court were had. That is precisely what was decided in Allen vs. Walsh, and all that was decided, as an examination of that case will show. When in Hanson vs. Davison for the first time the question came before the Minnesota court as to whether or not the proceeding under Chap. 76 was exclusive in the sense that a stockholder who could not be reached in such proceeding, could not be reached by an action ancillary to such proceeding, the Minnesota court determined that it was not, and says (p. 459-461), that Allen vs. Walsh decides simply that a single creditor cannot sue a single stockholder at law for his own benefit; that it was not there decided that if a stockholder was not brought into the original action, his liability could not be enforced against him afterward, either by bringing him or his property into that action or by commencing an ancillary action, for that purpose, in any other jurisdiction where he might be found; that there is nothing in the nature of his liability or the method of enforcing it that prevents this being done. Just so this court, when this new question comes before it in Bank vs. Farnum, answers it in the same way and sees nothing inconsistent with these former decisions in so doing. As to the Massachusetts cases cited, if they are not to be disposed of in exactly the same way, then it is to be taken that all these cases are overruled as to this question of "exclusive remedy," in Howarth vs. Lombard, 175 Mass. 570, when that court entertains such ancillary action and says with reference to the constitution and law of the State of Washington (p. 575): "Insomuch as the nature of it and the method of enforcing it depend upon the statute which enters into the implied contract, we must look to the statute to ascertain its extent and the manner of enforcing it. If it is of such nature as to call for local proceedings in the state where that corporation is, in order to adjust equities, such proceedings must be had, and it cannot be made effectual without them. Most of the cases in which creditors of foreign corporations have been refused relief in this commonwealth have shown rights which, under the statutes creating them, could not properly be enforced without proceedings in the foreign state whereby equities could be adjusted. In the present case, as the statute has been construed, it is plain that no action can be maintained against a stockholder until after proceedings in a court of Washington showing the insolvency of the corporation and the need of payment to satisfy the claims of creditors. *After such proceedings, and an adjustment of the rights and liabilities of the corporation, of creditors and of stockholders, collection can be made from stockholders wherever they are found.*"

The conclusion is then both on principle and authority that such original proceeding is the exclusive remedy only in the sense that it excludes any action at law by a single creditor against a single stockholder, and indeed all other actions to enforce the liability, until this proceeding is had. That, too, is the position of Justice Dodge in his dissenting opinion in the case at bar, where he says (99), "The assertion in Coleman vs. White (14 Wis. 762) that a general equitable suit with all creditors as plaintiffs and all stockholders within the jurisdic-

tion, together with the corporation, as defendants, is the exclusive remedy, could mean no more than that such remedy is exclusive of a direct action at law by one creditor against one stockholder when the equitable proceedure was neither obstructed nor exhausted."

The Wisconsin court say again (82):

The action in a Minnesota court is a bar to any other action to enforce the liability of stockholders.

This is in effect, as here applied, the same claim as that of exclusive remedy above. But if carried to its logical result it practically denies all remedy and thus annuls the right. No personal judgment can be obtained against stockholders not within the jurisdiction of the court prosecuting this general proceeding. If then practically all the stock is held by non-residents or in the names of non-residents, or if indeed such stockholders remove from the jurisdiction before they are served with process for the very purpose of evading same, creditors if they wait for their return, which may never happen, will lose their rights by the statutes of limitations, and if they go to judgment against the few within the jurisdiction they have forever released all those so evading their liability, and the proceeding becomes practically worthless. The manifest injustice to the honest local stockholder thus becomes apparent. The Minnesota court has frequently held, as in First Nat'l Bank vs. Winona Plow Co., 58 Minn. 167, Harper vs. Carroll, 66 Minn. 487, that the liability of the stockholder is as to creditors absolute to his full liability and not *pro rata*, and the Wisconsin court holds the same in Rehbein vs Rahr, 109 Wis. 136. If then fifty per cent of the liability of all would discharge the debts and one-half the stockholders are brought in to the home proceeding they must pay it all and if this proceeding is a bar, those who have evaded that action go scott free.

The Wisconsin court goes on to say that to sustain this "new doctrine" that further suits can be had against those not brought in it becomes necessary to hold (90) "That in an ancillary action all questions litigated in the principal action must be deemed at rest, so that while defendants in the first action have their day in court as to the vital questions standing at the threshold of their liability; those in actions subsequently brought are bound without having that privilege; that while some stockholders can have their equities as between themselves and associate stockholders settled in the action where their liability is enforced, others may be made to respond and to cancel their liability, and then be compelled to resort to some other action, in some other jurisdiction, to settle their equities with their associates," and "that this doctrine of Hanson vs. Davison is without support except in Hale vs. Hardon," and (92) "is so out of harmony with the previously established doctrine of the Minnesota court and with elementary principles, and so subsersive of the rights of parties equally interested in a controversy to an equality of remedies, and to the right of every person to his day in court as to every [redacted] question involving his interest, that there is no rule of comity which requires or justifies its recognition in any other jurisdiction."

That the decree against the corporation is binding on the stockholder without being personally served, as to the super-added liability, because, as Chief Justice Fuller said in Hawkins vs. Glen, 131 U. S.

319, "A stockholder is so far an integral part of the corporation that, in the view of the law, he is privy to the proceedings touching the body of which he is a member" cannot be called "new doctrine," since Howarth vs. Lombard, 175 Mass. 570, *supra*, Childs vs. Cleaves, 95 Me. 498, *supra*, and other cases above cited, certainly not since Bank vs. Farnum, and when this court in the Farnum case cited Hawkins vs. Glen in support of this position, it endorsed the claim of the Minnesota court in Hanson vs. Davison, and Holland vs. Duluth, 65 Minn. 324, *supra*, that there is no difference in this regard whether the action be to enforce an assessment for unpaid stock or to enforce the so-called statutory liability, thus bringing to the support of Hanson vs. Davison the long line of cases brought on stock subscriptions, of which Hawkins vs. Glen is the leading one.

To support such action discriminates against the local stockholder.

As to the claim that the non-resident stockholder is thus denied an equality of remedies and is thus unjustly discriminated against practically means nothing more than that he is thus deprived of the advantages of contribution as against his fellow stockholders. It would seem a sufficient answer to say that it is not only his privilege but his duty to come into such original action, and if he does not do so he ought not to complain. The court tries here to distinguish the Minnesota statute from the Kansas statute. But it is difficult to understand how it can be more equitable to enforce under the Kansas statute where there can be no contribution in the original action, than under the Minnesota statute where such relief is given to all that come in, and all may so do. In Childs vs. Cleaves, 95 Me. 498 (p. 517) the court discusses the Minnesota statute and says it "is seen to be free from the less equitable features of those statutes which authorize a single creditor, without a *pro rata* assessment, to maintain an action against a single stockholder for his own benefit and not for the benefit of all the creditors."

The proposition that the Wisconsin court makes is that it is more in accordance with sound public policy and good morals that a stockholder by evading the original action should escape his contract liability rather than be put to the annoyance of enforcing contribution thereafter if the necessity and occasion so to do should fall upon him. But as Justice Dodge says, in the case at bar, it appears that the debts largely exceed the liability of all solvent stockholders and as the court said in Mason vs. Alexander, 44 Oh. St. 318-335, the question of contribution does not arise, and if it did it is, as the court said in Hanson vs. Davison "subordinate to the equities of the creditors, as he can secure such contribution by appearing in the original action." And "it certainly concerns the due administration of justice that all stockholders, wherever they reside, should be compelled by proceedings somewhere to perform the statutory obligations toward creditors of the corporation which they have assumed by becoming stockholders." Bank vs. Ellis, 172 Mass. 39-47.

In Guerney vs. Moore, 131 Mo. 650, the court says it does not at all follow that because there is no such added liability in Missouri that the courts of that state will refuse to enforce the contracts of its citizens who voluntarily go into other states and assume such liability by becoming stockholders (p. 673). "Such a contract is not against public policy. It contravenes no principles of good morals and has no mis-

chievous tendency. It is not in any sense repugnant to our ideas of honesty or injustice."

In Howarth vs. Lombard, 175 Mass. 570-576, the court says: "We see no injustice to the defendant in holding him here to the performance of the obligation which he voluntarily assumed in another state." The court in Hale vs. Hardon (p. 572) characterizes the decision in Marshall vs. Sherman, 148 N. Y. 9, as "in the direction of repudiation, subversive of judicial right and of justice and fraught with danger to the idea of permanent and uniform rule," and says the real question involved "is a question of right—a question whether an unquestioned liability shall be enforced outside of the parent forum after all has been done there that can be done, or whether the unquestioned right shall exist without a remedy," and again (p. 755) "It was not understood that the statutory liability should have no force unless the non-resident stockholder was made a party to the proceedings as to corporate affairs which the statute intended and expressly provided should be had in the district courts of Minnesota. Making a non-resident stockholder a party to the contemplated legal and equitable proceeding for such purpose was a thing impossible and a construction requiring it would render the statutory liability inoperative at its inception."

In Dexter vs. Edmands, 89 Fed. 467 the court said (p. 470): "I find it difficult to imagine what would be the condition of this government if the federal courts should refuse, on any of the grounds just mentioned, to recognize and enforce the right arising under a state statute which had been formally adopted, and was not contrary either to the constitution of the United States or that of the state adopting it."

In Kisseberth vs. Prescott, 91 Fed. 611, the court said (p. 613): "I do not think that the enforcement of the creditors rights against the stockholder is meant to depend upon the ability of the stockholder to secure contribution in the same jurisdiction in which he is himself sued. The defendants contend that the remedy given by section 1204 (securing right of contribution) is confined to the jurisdiction of Kansas. Such a limitation would leave the remedy practically worthless to the creditor, while imposing upon the stockholder found in Kansas a burden, which stockholders not found there would not fully share. I find no evidence in the statute of an intention thus to discriminate against the Kansas stockholder."

The progress of the courts of Massachusetts from Erickson vs. Nesmith, 4 Allen 233, to Howarth vs. Lombard, is very marked and it is very evident that that court does not regard its change as made against good morals or true public policy but quite the contrary, and has laid down as the basis of its present position that elementary justice requires that one should not be allowed to evade his contract because of a fancied technical difficulty of method of enforcement. Attention has frequently been called to the growth of the courts toward enforcing this liability in foreign jurisdiction as in Hale vs. Hardon and Childs vs. Cleaves. This decision of the Wisconsin court is a distinct step backward and while supported on the ground of equity makes distinctly for the contrary. As Justice Dodge says again (100) "Is it not the part of justice to vindicate the clear rights of the plaintiffs in this case

where it is obvious that no undue or unequal injury will be done the defendant, rather to perpetrate certain wrong on the plaintiffs from mere apprehension that under some other circumstances it might not be easy to fully protect a defendant. If either is to suffer, should it rather not be the stockholder, who by the same diligence she finds easy when demanding her dividends could have informed herself of the general litigation; and by appearing therein, have protected herself from any inequality? I the more deplore this decision because it diminishes the solvency of our own banks and denies to their creditors the liability of any stockholders who by reason of non-residence or otherwise may escape the process of the court in which the general equity suit must be prosecuted. It invites fraud and evasion by offering exemption to stockholders upon the easy expedient of placing their holdings in the names of non-residents. These are evils which with the probable drastic legislation to avert them, seem to me much more terrible than the inconvenience of courts or incongruity in mere forms of procedure."

Rights under a former construction.

The court urges as a further reason for its decision that (92) "To give effect to the Minnesota statutes as now construed by its highest tribunal, would be unjust to the defendant, because it would in effect, make a liability enforceable here that was not enforceable when it accrued and that could not have been enforced under the law of Minnesota as it existed prior thereto during the time the defendant was a member of the corporation" and the brief of the defendant in error on the motion for certiorari, says (p. 18), the settled construction of a statute is a part of the contract and a change of decision is equivalent to a repeal or amendment, citing the federal cases to that effect. But the answer is, that the Minnesota court says there has been no new construction and this seems borne out by an examination of the decisions. The principle too invoked would on the facts seem to have no application. The right that is here claimed for defendant is the right to escape liability provided she is a non-resident or provided she removes from the jurisdiction before service is made upon her. For there is here no distinction between the actual non-resident and the one that removes to escape service. If there had been a change of construction of the statute by the Minnesota court the right to escape liability by a technical evasion would seem not to come within the principle invoked. But as above shown all that was decided in Allen vs. Walsh was that a single creditor could not sue a single stockholder at law for his exclusive benefit. All the language therein used, that would seem to say that such original action was a bar to further proceedings, is dicta and the Minnesota court so declared in Hanson vs. Davison.

The Wisconsin court concludes (93): "This court recognizes fully the importance of interstate comity and uniformly freely gives effect to it as regards the laws of sister states when it will not seriously violate the policy of our own laws or the rights of our own citizens. Tested by that standard and the most liberal rules usually applied to the subject, courts of this state cannot lend their aid in the circumstances presented in the complaint before us. A liberal course in the enforcement of the laws of other states in proper cases should be the rule, but the paramount duty of our judicial system is to safeguard our own state policy and prevent injustice to our own people within

reasonable limits." This is exactly the position taken by the Rhode Island court in Bank vs. Farnum, when this court held that nevertheless when it refused to enforce the transitory right of action it violated the federal constitution and law. In the Farnum case, too, the state court denied that the home state gave its laws such a construction that made the right of action transitory, here it is admitted.

The conclusion is that the Wisconsin court denies a federal right in arriving at its decision because it explicitly refuses to give force to the cause of action admitted to be transitory as interpreted by the Minnesota court, and the reasons given for so doing makes more clear the violation of such right.

Further claims of defendant on motion for certiorari.

The brief of the defendant in error in reply to the motion for certiorari, makes further claim, that the Wisconsin court might have rested its decision on some non-federal question, but the first answer is that it did not and the second is that none are pointed out which are broad enough to support a decision. All the matters suggested would be matters of defense on the trial if they have any force. For instance, it is claimed that (p. 19) part of the debts of the bank may have been barred by the statute of limitations. Such, if true, might be a partial defense, but not a ground of demurrer. But there is no such question, for the commencement of proceedings tolled the statute both as to the bank and the stockholders. London, etc., Co. vs. St. Paul, etc., Co., 84 Minn. 144. Potts vs. St. Paul A. P. Assn., 84 Minn. 217. Again it is suggested that some of the stockholders had been settled with. But it is admitted by the demurrer such were insolvent except in two cases representing a liability of $3.400.00, and that as to these all was collected that could be (50). This liability is not ratable or proportionate. Rehbein vs Rahr, 109 Wis. 137 supra, and therefore the authorities cited have no application. In any event since the complaint shows that every solvent stockholder must respond to his total liability, she could not be prejudiced because it is no concern of hers unless the settlement with another increased her liability. Howard vs. Glen, 85 Ga. 238. Bennett vs. Glen, 55 Fed. 956.

Was the federal question sufficiently set up or claimed in the state court?

The record shows the claim to be made:

1. By the allegations in the complaint (43-46). It is alleged and admitted by the demurrer that liability is several and not joint, absolute and not contingent and contractual, and not penal; that by becoming a stockholder one agrees that the Minnesota laws are part of his contract and that the action to enforce the liability thereunder is an action on contract; that the original action is not the exclusive remedy but an ancillary action against any omitted stockholder may be brought in any jurisdiction where he may be found; that the original judgment does not release those not brought into the original action but is binding on all such, as in effect against them in their corporate capacity in an action to enforce same in any jurisdiction where they may be found. To refuse to enforce such a cause of action is neces-

sarily a denial of the federal right. It is true the pleader might have alleged also that to refuse to entertain the action is contrary to the federal constitution and laws, but this is a necessary inference, and to set it out seems, on its face, bad pleading. Plaintiffs did not suppose, and had no right to assume in the first instance that the court would so refuse, to entertain the suit.

This case is analagous to those below cited, where a state statute is pleaded as constituting a contract. It is not necessary to plead that to refuse to enforce it is contrary to the federal constitution as impairing a contract. Such is Bridge Proprietors vs. Hoboken Co. and others cited below.

Further, this action is based on the "acts, records and judicial proceedings" of another state and this court has held that if such proceedings in another state are set up as the foundation of the cause of action and the state court denies them the effect claimed, or, as here, denies them any effect, then this court has jurisdiction.

Green vs. Van Buskirk, 5 Wall. 307.
Same case, 7 Wall. 139.
Crapo vs. Kelly, 16 Wall. 610.
Dupasseur vs. Rochereau, 21 Wall. 130.
Carpenter vs. Strange, 141 U. S. 87.
Roby vs. Colehour, 146 U. S. 153.
Huntington vs. Attrill, 146 U. S. 657.
Dowell vs. Applegate, 152 U. S. 327.
Great Western Telegraph Co. vs. Purdy, 162 U. S. 329.
Pittsburgh etc. Ry. Co. vs. Loan & Trust Co., 172 U. S. 493, 507.
Hancock Nat. Bank vs. Farnum, 176 U. S. 640
Jacobs vs Marks, 182 U. S. 583.
Nat. F'dry vs. Oconto etc. Co., 183 U. S. 216, 233, and other cases below discussed.

2. It appears by the affidavit of A. J. Vinje, circuit judge (p. 12, motion for certiorari) the attorney for plaintiffs in error, when the case first came before that court (in which the action was originally brought) on demurrer in a brief and oral argument, "duly presented to the court and duly claimed that the statutory liability of stockholders to creditors is a substantive right of action arising on contract enforceable in any jurisdiction, and that to refuse to enforce in the courts of the state of Wisconsin, the cause of action set out in plaintiffs complaint, would be contrary to the constitution and laws of the United States, in that it would be a refusal to give due faith and credit to the proceedings of the courts of the state of Minnesota."

It thus appears that the fact of a federal question being involved was brought to the attention of that court at the earliest possible moment. In fact, though it does not appear, this judge overruled the demurrer on this ground.

3. The rules of the supreme court of Wisconsin provide (pp. 4-5 motion for certiorari) that (rule IX) "Each party shall prepare and print a brief. * * * The brief of the appellant or plaintiff in error must contain a concise statement; (1) the nature of the action and the issues involved; (2) the result of the trial or hearing in the court below; (3) *the several errors relied upon for reversal;* (4) in cases

depending upon the evidence, the leading facts or conclusions which the evidence establishes or tends to prove; (5) the principles of law applicable to the case, and the authorities in support of same. The brief of the respondent in error may point out any insufficiency or inaccuracy in the brief of the opposite party, and supply, correct and answer the same in the order indicated; and may also in the cases indicated, state any leading facts or conclusions which the evidence establishes or tends to prove, and any principles of law applicable to the case, and the authorities in support of same," and that (rule XVIII) "Before calling the calendar cause, the plaintiff in error or appellant shall file with the clerk eight copies of the printed case, and each party eight copies of the printed brief. The clerk shall deliver one copy of each to each of the justices, to the reporter and to the state librarian."

In accordance with these rules on the first appeal to the Wisconsin supreme court these plaintiffs in error duly filed as respondents their brief which by the order of this court has been made a part of the record here, and is marked "*Respondent's Brief.*" In said brief, plaintiffs in error duly claimed (p. 36) (this also appears in motion for certiorari, pp. 14-18):

"The question before this court is in short this: Will this court refuse to enforce the solemn contract of this defendant, entered into under the laws of Minnesota, simply because she is a resident of the state of Wisconsin, the laws, their interpretation and the methods of enforcement of the two states, being practically identical? A question whether an unquestioned liability shall be enforced outside of the parent forum after all has been done there that can be done. * * *

"To decline to maintain this action is to refuse to enforce a contract because made in another state, and is a simple refusal of justice; it is to declare that an unquestionable right shall go without a remedy."

And under this general proposition plaintiffs in said brief, duly presented the following claims (pp. 36-51) citing the authorities under each claim:

"A cause of action arising on contract is a substantive right, enforceable everywhere."

"The statutory liability of stockholders to creditors is a substantive right of action arising on contract."

"A right of action arising on a statute is just as enforceable in any other state as a right of action under the common law."

"The principle applied in these cases applies with equal force to the statutes enacting liability of stockholders."

"This action then is really one to enforce a valid contract as much so as if it were a promissory note made in the state of Minnesota; and to refuse to entertain this action is a refusal to enforce a contract simply because it was made in another state, and to refuse to recognize the validity of a solemn and just contract."

And also (pp. 64-81):

"This action is ancillary to the decree entered in the Minnesota court. The proceedings there had are binding on the stockholders

everywhere, and to refuse to maintain this action is to refuse to give due faith and credit to the judgment of a sister state.

"1. This is an ancillary action.

"As twice before suggested in this brief, the question here arising is quite other than the one usually in such cases, in that this case is ancillary to exhaustive proceedings in the home jurisdiction. The considerations here presented are such that a court might readily maintain this action where it had before declined to maintain an original action." (P. 64).

"2. The judgment in the Minnesota court is binding here."

"4. (P. 79) Not to enforce plaintiffs' judgment is to refuse to give due faith and credit to the judgment of a sister state."

"In Huntington vs. Attrill, 146 U. S. 657, the facts are, a judgment was recovered in the state of New York under the statutes of New York against the defendant in 1863 for his liability as a stockholder and officer in a certain corporation. An action was brought in the state of Maryland to enforce the New York judgment. The court of appeals of Maryland sustained the demurrer to the bill on the ground that the judgment obtained in New York was in the nature of a penalty. A writ of error was issued out of the U. S. supreme court, and that court, in an elaborate and exhaustive opinion, holds that the refusal of the Maryland court to enforce said judgment was contrary to the constitution, in that it did not give due faith and credit to the judgment rendered in the New York court."

Citing also Pelzer Mfg. Co. vs. Fire Ins. Co., 71 Fed. 826, and Central Trust Co. vs. Railroad Co., 65 Fed. 257, and quoting therefrom the words of the court, that

"A refusal to give it (the judgment) the force and effect in this respect which it has in the state in which it was rendered, denies to the judgment creditor a right secured to him by the constitution and laws of the United States."

It thus appears that plaintiffs in error, since they were respondents on that appeal, presented the federal question to the supreme court of Wisconsin *in the only way it could then be done* under the law and practice in that court. Being respondents they could neither take exceptions in the court below or assign errors on appeal.

4. When the case was sent back to the circuit court for further proceedings plaintiffs in error attempted twice (as defendant in error has placed before this court in his brief on motion for certiorari, p. 3), to amend their complaint by inserting therein the words "that for the courts of Wisconsin to refuse to enforce said judgment and decree is contrary to the constitution and laws of the United States, but more especially in this, that by the constitution and laws of the United States the said judgment and decree must be given the same force and effect in the state of Wisconsin that it has in the state of Minnesota, and that to refuse to enforce said judgment and decree against said defendant

in the state of Wisconsin, is contrary to the constitution and laws of the United States, in that it does not give full faith and credit in said state of Wisconsin to the public records and judicialproceedingsofthe state of Minnesota, and does not give to such records and judicial proceedings such faith and credit in the courts of Wisconsin as they have by law and usage in the courts of Minnesota."

Which motions to amend were denied. (Same brief, p. 6).

Certainly plaintiffs cannot be prejudiced by this showing. On the contrary it shows they were insisting at every step that there was a federal question involved, and bringing such question to the attention of the court. Whatever the court's reason for denying the motion, it could not so deny without having in mind the federal question thus presented.

5. The demurrer was again brought up for hearing before the the circuit court, whereupon that court (102) ordered the demurrer sustained and the complaint dismissed. To this order plaintiffs in error duly excepted, as follows (102-103):

"To the above and foregoing order and each and every part thereof plaintiffs except.

"The plaintiffs also duly excepted to the said order of the court made herein sustaining the demurrer to said complaint and dismissing the complaint on the ground that it denies them a right given by Sec. 1, Art. 4, of the Constitution of the United States, which reads:

> "'Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.'

"And the following statute passed in pursuance thereof, to-wit:

> "Revised statutes of the U. S., Sec. 905: 'The acts of the legislature of any state or territory, or of any country subject to the jurisdiction of the United States, shall be authenticated by having the seals of such state, territory, or country affixed thereto. The records and judicial proceedings of the courts of any state or territory, or of any such country, shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with the certificate of the judge, chief justice, or presiding magistrate, that the said attestation is in due form. And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the state from which they are taken.'

"And that said order and decision is contrary to said provisions of the constitution and laws of the United States.

"E. W. HELMS, *Circuit Judge.*"

These exceptions were duly signed by the judge.

Defendant's brief on motion for certiorari suggests that this exception could not avail in the supreme court of Wisconsin because not embraced in a bill of exceptions. But an appeal from a judgment dismissing a complaint brings up the order sustaining the demurrer on which the judgment is founded. *American, etc., Co. vs. Gurnee*, 44 Wis. 49; *Moritz vs. Splitt*, 55 Wis. 441; *State vs. St. Croix Co.*, 83 Wis. 340-344. And no bill of exceptions was necessary on appeal from the judgment of the circuit court to the supreme court of Wisconsin. *Lewis vs. Chicago & N. R. Co.*, 97 Wis. 368; *Dow vs. Deissmer*, 105 Wis. 385; *Town of I. R. vs. Bayfield County*, 106 Wis. 587. Justice Dodge also suggests (112) that this exception was not properly before that court as an exception because not in a bill of exceptions. But a bill of exceptions not being necessary, and all objections to the proceeding in the court below being available in the supreme court without such bill of exceptions, such a bill would have been both useless and void. But such exception so taken does serve to show to this court that it was duly brought to the attention of the circuit court that its decision was in violation of the federal right.

6. Plaintiffs in error duly appealed to the Wisconsin supreme court from the judgment entered on said order, and duly filed their brief under the foregoing rules. A copy of this brief is by order of this court made a part of the record here, and is marked "*Appellant's Brief*." In this brief plaintiffs in error duly made their assignments of error as required by said rules in these words: (P. 3.) (Motion for Certiorari, p. 19.)

"The circuit court erred:

"1. In sustaining the demurrer.

"2. In ordering the action dismissed.

"3. In ordering and entering judgment of dismissal.

"4. In that it denied plaintiffs a right given them by Sec. 1, Art. 4, of the Constitution of the United States, and by Sec. 905 of the Revised Statutes of the United States, that full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state, and that said records and judicial proceedings shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the state from which they are taken."

And in enforcing these assignments appellants made the following propositions, all of which were duly supported by citations of authorities as therein appears, to-wit:

"The liability here sought to be enforced is, though statutory in its origin, contractual in its nature." (P. 6.)

"There is no essential difference between this liability and the liability for unpaid assessments on stock." (P. 7.)

"The proceedings in the Minnesota court are binding on stock-

holders who are not before the court otherwise than by virtue of their membership in the corporation." (P. 7.)

"The construction of the Minnesota statute by the Minnesota court is binding on all other courts." (P. 7.)

"The right to enforce this liability is not a mere matter of comity, but is a right under the general principal of jurisprudence to enforce a contract." (P. 8.)

And says (p. 8):

> "If I understand these decisions rightly they hold that if the liability is contractual the cause of action is transitory, that whether or not it is contractual and therefore transitory depends on the construction of the laws by the court of last resort in the home state of the corporation; if such court has construed such laws so as to give a contractual liability such right of action on contract can be enforced anywhere, whether it be done under the general principles of jurisprudence or be regarded as a matter of comity, and where the action in the foreign forum is an ancillary action in aid of the proceedings already had in the home forum, a refusal to entertain such suit by the foreign court is contrary to the constitution and laws of the United States, which require that the *same* faith and credit must be given these proceedings in other states to which they are entitled in the state in which they were had."

And concludes as follows (p. 19):

> "Now this court said (syllabus) in Eau Claire Nat'l Bank vs. Benson, 106 Wis. 624: 'The constitutional or statutory liability of stockholders of a corporation to its creditors, created by the laws of the state of Minnesota, must be held to be of the same nature here as by the highest court of such state, and that that court having determined the nature of such liability this court is bound thereby.' And in Finney vs. Guy this court refuses to enforce the Minnesota law because (p. 625) '(1) The statutory right coupled with the statutory remedy for its enforcement clearly intended to be pursued at the home of the corporation, is not transitory. (2) The action in a Minnesota court is a bar to any other action to enforce the liability of stockholders', but this court admits (p. 271) that under Hanson vs. Davison the right of action is (p. 271), (1) Contractual and transitory, (2) Does not provide a special remedy enforceable only in the original action. (3) Is not barred as to stockholders not brought into the original action. Then under the admissions in the decision itself Finney vs. Guy is contrary to the federal constitution and laws, on the authority of Hancock Bank vs. Farnum and Whitman vs. Bank, for it specifically refuses (p. 275) 'to give effect to the Minnesota law as now construed by its highest tribunal', and says for reasons named (p. 276) 'The law of Minnesota, as now understood, should not be made effective here.'"

The federal question was thus squarely presented to the supreme court of Wisconsin. This court has frequently decided that it is sufficient if the federal question is presented to the state court of last resort whether or not is was so presented in the lower courts of the state, as in Sully vs. American Natl. Bank, 178 U. S. 289.

As above shown the federal question was presented to the supreme court of Wisconsin on the first appeal in the only way it could then have been presented. It was remanded for further proceedings in the circuit court. On such proceedings the federal question was there presented by exceptions. On the appeal from the judgment of the circuit court it was held by the Wisconsin court, following this court in Great Western T. Co. vs. Burnham, 162 U. S. 339, that such judgment was open for review in the supreme court (113), and on such review the federal question was again presented by these assignments of error and brief thereon, all in accordance with the rules of that court. The Wisconsin court held, again in accord with the holding of this court, that it would not reconsider any question decided on the former appeal, and that since on the former appeal (113) "it decided unambiguously that the complaint fails to state any cause of action maintainable in our courts" the action of the lower court in entering judgment on the demurrer was right and must be affirmed "no matter what new or different arguments might now be urged against the correctness of the conclusion then reached." Now it would seem that under Whitman vs. Bank, Bank vs. Farnum, Huntington vs. Attrill and the other cases that the Wisconsin decision on its face denies the federal right, in deciding that no cause of action that would be maintained in Wisconsin, was stated. Estoppel by judgment upon the complaint "extends only to the exact point raised by the pleadings or decided." Wiggins Ferry Co. vs. O. & M. Railway, 142 U. S. 396, 410. And in any case a former decision is only *res adjudicata* as to *questions actually passed upon or necessarily involved*.

Russel vs. Place, 94 U. S. 606.
Carroll vs. Lessee of Carroll, 16 How. 275-286.
St. Louis Ry. vs. Terre Haute Ry., 145 U. S. 393-403.
Pollock vs. Farmers L. & T. Co., 157 U. S. 429-574.
Bardes vs. Bank, 178 U. S. 524-534.

The law of the case on the second appeal of a case goes no further than this. "The principle is sharply limited to decisions on a prior appeal on points necessary to a determination of the cause." 2 Enc. Pl. & Pr. 381. In the words of this court in Barney vs. Winona, etc., Ry. Co., 117 U. S. 228-231:

> "We recognize the rule that what was decided in a case pending before us on appeal, is not open to reconsideration in the same case on a second appeal upon similar facts. The first decision is the law of the case and must control its disposition; but the rule does not apply to expressions of opinion on matters the disposition of which was not required for the decision."

If, then, this decision involves a federal question, as we think it is shown it does, then the refusal to consider such question on the second appeal is a declaration by the Wisconsin court that such question was

either *directly passed upon on the former appeal, or that it was necessarily involved* in arriving at the conclusion "that the complaint fails to state any cause of action maintainable in our courts." In either case, as the citations below show, this court has jurisdiction.

7. The chief justice of the supreme court of Wisconsin made the following certificate (6):

"I am requested by the attorney for the plaintiffs to state, as the fact is, that upon the hearing of this court, he argued orally, and in his printed brief, that not to enforce the judgment of the Minnesota court was to refuse to give due faith and credit to the judgment of a sister state."

In considering the question of jurisdiction it has been the practice of this court to give weight to the certificate of the chief justice of the state court.

Murdock vs. Memphis, 20 Wall. 590, 633.
Roby vs. Colehour, 146 U. S. 153, 160.
Powell vs. Brunswick County, 150 U. S. 433, 439.
Gulf etc. Co. vs. Hewes, 183 U. S. 66.

Though it was always held this was not in itself sufficient to confer jurisdiction, but that its office is "to make more certain and specific what is too general and indefinite in the record." But plaintiffs in error claim the decisions of this court show the federal right was sufficiently "set up or claimed" to give this court jurisdiction because it appears,

1. *The federal question was necessarily involved.* The decision could not be arrived at without denying the federal right.

2. *The federal question was called to the attention of Wisconsin supreme court.* The complaint states in explicit terms a transitory cause of action and the demurrer admits it. It was presented on the first appeal by "*respondent's brief*," and on the second appeal by the assignments of error and "*appellant's brief*."

3. *That court explicitly declares the law of Minnesota, as now understood, shows a transitory right of action.*

4. *The right was claimed in the only way feasible under the practice of that court.*

5. *The refusal of that court on the second appeal to consider the federal question, because of the law of the case, was a declaration that the federal question was necessarily involved in the first decision.*

6. *The pleading of the records and proceedings of the courts of another state as the foundation of a cause of action is itself an assertion of the federal right.*

Review of the cases on the question of jurisdiction.

In Crowell vs. Randell, 10 Pet. 367, this court reviewed all its former decisions on the question of its jurisdiction, in cases of writs of error to state courts and from such review concludes that although

it is necessary that a federal question must have arisen and been decided by the state court, it is not necessary (pg. 397) "that the question should appear on the record to have been raised, and the decision made in direct and positive terms, *ipsissimis verbis;* but that it is sufficient if it appears, by clear and necessary intendment, that the question must have been raised, and must have been decided, in order to induce the judgment."

In Armstrong vs. Treasurer Athens County, 16 Pet. 279, this court again summarized it to be the law of this court, that jurisdiction must appear in the record, in one of six methods, two of which are these (pg. 284):

"1st. Either by express averment, or by necessary intendment in the pleadings in the case.

"6th. It must appear from the records, that the question was necessarily involved in the decision; and that the state court could not have given the judgment or decree which they passed without deciding it."

In Bridge Proprietors vs. Hoboken Co., 1 Wall. 116, it was claimed that plaintiff had by statute an exclusive right from the state of New Jersey to maintain a bridge across the Passaic River and that a subsequent statute giving defendant a right to build a railroad over the same river violated such contract right. The bill was for an injunction. From the statement of the case it appears that the allegations from which a federal question arose were to the effect that by virtue of such statute plaintiff had a contract with the state, that no other persons should erect any bridge, which contract the state could not by any law impair, and that the defendant claimed that the state was not bound by any such contract. It appears that the chancellor in deciding the case in the state court said in his opinion that such a contract is within the protection of the provision of the constitution declaring against the impairing of contracts, but as is noted (pg 123) such opinion was then no part of the record nor strictly in evidence even. The sole record as to a federal question was the statement in the bill that by virtue of the statute the state had entered into a contract which by law it could not impair, and the answer of the defendant that the state did "not contract." Justice Miller recites that it was objected that the pleadings do not in words say the statute is void because is conflicts with the federal constitution nor point out the clause violated, but declares that it would be a new and superfluous rule of pleading if the party must set out specially the provision on which he relies; that thise court takes judicial notice of the constitution of the United States without pleading and said (pg 124) "and if the plaintiff and defendant in their pleadings, make a case which necessarily comes within some of the provisions of that instrument, this court can surely recognize the fact without requiring the pleader to say in words, "This paragraph of the constitution is the one involved in this case."

In Furman vs. Nichol 8 Wall 44, the charter of a state bank made its bills receivable for taxes. This provision was repealed and Furman tendered some of these notes for taxes and brought this action in man-

damus to compel the clerk to receive them. The petition averred only, that the charter was a contract which it was not in the power of the legislature of the state of Tennessee to impair. A demurrer was overruled by the trial court but the supreme court reversed the lower court. The judgment in the supreme court was simply one of reversal and without any assignment of reasons whatever. This court held it had jurisdiction under the act of 1889 (pg 56) "whenever some one of the questions embraced in it was relied on by the party who brings the cause here, and when the right he claimed it gave him, was denied to him by the state court," that it is not necessary that the particular provision of the constitution be set out but "If the record shows, either by express averment or by clear and necessary intendment, that the constitutional provisions did arise, and that the court below could not have reached the conclusion, and judgment it did reach, without applying it to the case in hand, then the jurisdiction of this court attaches"; (pg 59) that it was not even necessary to plead that the state court had impaired the obligation of a contract because this appeared by necessary intendment from the facts pleaded and concluded, "It is clear from the record that the supreme court of Tennessee, in dismissing the petition for mandamus, necessarily adjudged that there was not at the time such a contract as the plaintiff, Furman, claimed authorized him to make the tender to the clerk of the notes of the Bank of Tennessee. The jurisdiction of this court is, therefore, complete, and the case must be decided on its merits."

All the foregoing cases were decided under the act of 1789.

In Murdock vs. Memphis 20 Wall, 590, Mr. Justice Miller calls attention to the fact that in deciding the question of jurisdiction this court is not so closely confined to what appears on the face of the record under the act of 1867, as it was under the act of 1789, and says that when a federal question was presented to the state court it must appear *either* (pg 636 "That it must have been decided by the state court, *or* that its decision was necessary to the judgment or decree rendered in the case", thus holding in effect that, if the federal question was necessarily involved, it is sufficient.

In Murray vs. Charleston 96 U. S. 432, the question was whether a statute and a city ordinance under same, impaired a contract by taxing the city's own stock. No federal question was asserted in the pleadings and none referred to in the decision of the trial court. The notice of appeal to the supreme court set forth, (pg 434) "that such tax is a violation of good faith in the contract of loan, impairs the obligation of said contract, and is, therefore, unconstitutional and void."

It was claimed that the record did not show jurisdiction but this court said (pg 441) "In questions relating to our jurisdiction, undue importance is often attributed to the inquiry whether the pleadings in the state court expressly assert a right under the federal constitution. *The true test is not whether the record exhibits an express statement that a federal question was presented, but whether such a question was decided, and decided adversely to the federal right.* Everywhere in our decisions it has been held that we may review the judgments of a state court when the determination or judgment of that court could not have been given without deciding upon a right or authority claimed to exist

under the constitution, laws or treaties of the United States, and deciding against that right. *Very little importance has been attached to the inquiry whether the federal question was formally raised.*"

In Chicago Life Ins. Co. vs. Needles, 113 U. S. 574, no federal question was raised in the pleadings and the state court did not in terms pass upon any such question. The plaintiff moved on the final hearing in the state court for a decree in its favor on the ground, among others, that the state statute impaired the obligations of a contract and was in violation of the federal constitution, and on appeal assigned as error the refusal to so decree (pg 578-9). This court said the final judgment of the state court necessarily involved an adjudication of this claim although the state court did not in terms pass upon it and that therefore this court had jurisdiction.

Eureka Lake Co. vs. Yuba County, 116 U. S. 410, holds that when this court may *reasonably infer*, that the federal question raised here, was necessarily involved in the decision of the state court, this court will retain jurisdiction, though it may not appear affirmatively on the record that such question was raised there.

In Arrowsmith vs. Harmoning 118 U. S. 194, the question was as to possession of land. In the supreme court of the state it was assigned as error that the district court in affirming the judgment of the court of common pleas deprived plaintiff of his property without due process of law contrary to the federal constitution. This court said that though such question was not noticed in the opinion of the state court, the question whether or not a state statute was in violation of the federal constitution was necessarily involved, and retained jurisdiction.

In Crescent Live Stock Co. vs. Butchers Union 120 U. S. 141, the sole question was (pg 146) "Did the supreme court of Louisiana, in deciding against the plaintiffs in error, give proper effect to the decree of the circuit court of the United States?" Such decree was offered as showing probable cause in an action for malicious prosecution. This court said that the state court failed to give such decree due effect and reversed that court. It does not appear that in the state court any direct reference was made to any federal question and it was argued there was none in the case. This court said the question whether a state court had given due effect to the judgment of a court of the United States is a federal question and in denying such effect to such judgment in itself gave this court jurisdiction. From the necessities of the case there could be nothing in the pleadings concerning such question, but when the state court, as in the case at bar, refused to give *any* effect to the judgment of the state court it necessarily denied a right under the federal constitution and laws.

In Chapman vs. Goodnow 123 U. S. 540, the defendant pleaded in bar a former adjudication in this court in 17 Wall. 153. This court said in sustaining this defense (pg 548) "We are aware that a right or immunity set up or claimed under the constitution or laws of the United States may be denied as well by evading a direct decision thereon as by positive action. If a federal question is fairly presented by the record, and its decision is actually necessary to the determination of the case, a judgment which rejects the claim, but avoids all reference to it,

is as much against the right, within the meaning §709 of the revised statutes, as if it had been specifically referred to and the right directly refused."

In Des Moines Nav. Co. vs. Iowa Homestead Co. 123 U. S. 552, a case growing out of the same facts as Chapman vs. Goodnow supra, it was assigned as error that the court below refused to hold that the plaintiff was estopped by this same former adjudication of this court in 17 Wall. 153. The supreme court of Iowa refused to pass upon this question because not presented in the printed brief, saying the question was not before it. This court looked into the opinion of the Iowa court and the briefs in Littlefield vs. Goodnow submitted with this case in the Iowa court and held that this question *was* before that court and was decisive of the cause and reversed that court for refusing to so decide saying that in so refusing it failed to give due faith and credit to the decree of this court.

In Spencer vs. Merchant 125 U. S. 345, the question was as to the validity of an assessment on lands under the statutes of New York. The plaintiff's sole claim in the state court was in these words (pg 349) "That the statute of 1881 C 689 is unconstitutional and therefore void", because it was an attempt to validate a void assessment without the owners being heard. This court said, that though the constitution of New York was the same as that of the United States as to the provision in question and neither was mentioned, this sufficiently claimed he was deprived of his property without due process of law in violation of the constitution of the United States, and that the adverse decision of the state court "necessarily involved a decision against a right claimed" under that constitution, which this court had jurisdiction to review. (pg 352.)

In Carpenter vs. Strange 141 U. S. 87, this court took jurisdiction and reversed the supreme court of Tennessee solely because the record showed that court did not give the same credit and effect in the state of Tennessee to a judgment of a New York court, which such judgment had in New York.

In Kaukauna Co. vs. Green Bay, etc., Canal Co. 142 U. S. 254, the only question was whether a state statute deprived the plaintiffs in error of their property without due process of law.

The syllabus recites: "If the adjudication of a federal question is necessarily involved in the disposition of a case by a state court, it is not necessary that it should appear affirmatively in the record, or in the opinion of that court, that such question was raised and decided." In denying a motion to dismiss for want of jurisdiction, this court said that notwithstanding the fact of the violation of the constitution is not distinctly put in issue by the pleadings nor directly passed upon in the opinion of the court, yet if it is evident that the court could not have reached the conclusion it did without passing upon the right claimed, it is sufficient for (pg 269) "This court has had frequent occasion to hold that it is not always necessary that the federal question should appear affirmatively on the record, or in the opinion, if an adjudication of such questions were necessarily involved in the disposition of the case by the state court."

In Roby vs. Colehour, 146 U. S. 153, the question was as to the rights of Roby under a decree in bankruptcy. In denying a motion to dismiss for want of jurisdiction this court said (pg 159) "But although it does not appear from the opinion of the court of original jurisdiction, or the opinion of the supreme court of Illinois, that either court formally passed upon any question of a federal nature, the necessary effect of the decree was to determine, adversely to Roby, the rights and immunities claimed by him, in the pleadings and proof, under the proceedings in bankruptcy to which reference has been made."

In Huntington vs. Attrill 146 U. S. 657, the facts are, with reference to the question of jurisdiction, practically identical with those in the case at bar. A judgment was recovered in New York against Attrill as a director and stockholder in a New York corporation. Action was brought in the circuit court of Baltimore City to enforce that judgment. A demurrer was entered and overruled, but on appeal the court of appeals of Maryland reversed the order and dismissed the bill, because the judgment had, as that court held, been recovered in another state in an action for a penalty.

The state court concluded its opinion in these words (70 Md. 199) "Upon the whole, it appears to us that the complainant has no cause of action, which he can maintain in this state," while in the case at bar the Wisconsin court says (54) "The conclusion reached, is, that the complaint fails to state a cause of action that can be entertained by the courts of this state." This court reversed the court of appeals of Maryland saying (pg 666) "The question whether due faith and credit were thereby denied to the judgment rendered in another state is a federal question, of which this court has jurisdiction on this writ of error."

The court here cites among others, Green vs. an Buskirk, 5 Wall. 307, Crapo vs. Kelley, 16 Wall. 610, Dupasseur vs. Rochereau, 21 Wall. 130.

In Dowell vs. Applegate 152 U. S. 327 the decision is very similar to Huntington vs. Attrill.

Now if I understand these cases they hold that where a party in a state court sets up, as the foundation of his claim, or as a defence, judicial proceedings in another state, and the court of last resort of the state denies the effect claimed to such proceedings, then this court has jurisdiction on writ of error to such court. To plead such proceedings is to sufficiently "set up or claim" such right under the constitution without any reference whatever in the record to the constitution or laws of the United States and when the state court refuses to give the effect claimed or, as in the case at bar, *any* effect to such proceedings, it necessarily passes upon and denies the federal question whether or not it is mentioned. As this court said in Crapo vs. Kelly (pg 620) referring to Green vs. Van Buskirk supra, "Without reference to whether he was right or wrong, the fact that Green claimed under the judicial record of Illinois, and that his claim was overruled, was held to give this court jurisdiction. Without reference to whether Crapo was right or wrong, whether the question was *res integra*, or *res adjudicata*, the fact that he claimed title under the Massachusetts record and that his claim was overruled, gives the court jurisdiction of the

present case. The authority of Green vs. Van Buskirk in 5th Wallace, is clear to that point."

And when Green vs. Van Buskirk was decided on the merits in 7 Wall. 139, the court said again (p. 145), "This court, in denial of the motion to dismiss, held that the supreme court of New York necessarily decided *what* effect the attachment proceedings in Illinois had by the law and usage in that state; and as it decided against *the* effect which Green claimed for them, this court had jurisdiction." In the case at bar the statutes and the proceedings in the Minnesota court were set out. The Wisconsin court refused to give them any effect whatever. That plaintiffs in error set out also in the complaint the facts on which proceedings were had cannot affect the question of jurisdiction any more than in Huntington vs. Attrill where that was also done. The fact that such proceedings were set out and they were denied effect gives this court jurisdiction whatever this court thinks as to the merits of the case.

Great Western Telegraph Co. vs. Purdy 162 U. S. 329, was an action brought by a receiver of the corporation, appointed by the Illinois court to collect an assessment upon the stockholders ordered by said court against Purdy, a stockholder and citizen of Iowa. This court sustained the state court in deciding against the receiver on the statute of limitations but said on the question of jurisdiction (pg 334) "The plaintiff relied on the order of assessment, made by a court of the state of Illinois, as a judgment of that court, entitled to the effect of being conclusive evidence of the plaintiff's right to maintain this action against the defendant. The supreme court of the state of Iowa denied it that effect. The question whether that court thereby declined to give full faith and credit to a judicial proceeding of a court of another state, as required by the constitution and laws of the United States, was *necessarily* involved in the decision. This court therefore has jurisdiction of the case."

The writer of this brief examined the record in that case and nothing concerning the constitution or laws of the United States was alleged in the pleadings. The federal question was necessarily passed upon in arriving at the court's decision.

In Chicago, etc., R. R. Co. vs. Chicago, 166 U. S. 226, the question was whether defendant Railroad Co. was deprived of its property without due process of law in statutory proceedings to condemn land. There was no answer whatever by defendant but on its motion for a new trial, and in its assignments of error to the supreme court the defendant claimed the rulings of the court, the statute and proceedings were contrary to the fourteenth amendment.

In denying a motion to dismiss for want of jurisdiction this court said that the trial court in denying the motion for a new trial and in entering judgment necessarily denied the claim of federal right, and (pg 231) "It is true that the supreme court of Illinois did not in its opinion expressly refer to the constitution of the United States. But that circumstance is not conclusive against the jurisdiction of this court to re-examine the final judgment of the state court. The judgment of affirmance necessarily denied the federal rights thus specially set up by the defendant; for that judgment could not have been rendered without deciding adversely to such claims of right."

In California Bank vs. Kennedy, 167 U. S. 362, the question was as to the power of a national bank to hold stock in another corporation. The only allegation in the pleadings was that the stock issued to the bank was "issued without authority of this corporation defendant and without authority of law." On motion for a new trial below and on the appeal to the supreme court of California it was assigned as error that the bank had no power to hold stock under the laws of the United States. This court said that the suggestion of the want of jurisdiction was without merit.

In Green Bay, etc., Canal Co. vs. Patten Paper Co., 172 U. S. 58, the question in the Wisconsin court was as to the ownership of a water power. The Canal Co. set up in its cross complaint that its rights arose under certain acts of congress, and a certain contract with the United States. This was held sufficient on a motion to dismiss. This court said, after referring to Oxley Stave Co. vs. Butler County, 166 U. S. 648, as holding that the purpose of a party to assert a federal right must not be left to mere inference (p. 67). "But no particular form of words or phrases has ever been declared necessary in which the claim of federal rights must be asserted. It is sufficient if it appears from the record that such rights were specially set up or claimed in the state court *in such a manner as to bring it to the attention of that court*" and then reasserts as the "true and rational rule" in Bridge Proprietors vs. Hoboken Co., 1 Wall 116, *supra*, that it must appear that the party bringing the writ of error relied on some provision of the constitution and that the right thus claimed was denied, and quotes the language of Roby vs. Colehour, 146 U. S. 153 supra, that "If it appears from the record, by clear and necessary intendment, that the federal question must have been directly involved, so that the state court could not have given judgment, without deciding it, that will be sufficient."

The decision of the Wisconsin court, this court, said "necessarily held adversely to these claims of federal rights" and denied the motion to dismiss.

In Meyer vs. Richmond, 172 U. S. 82, the city of Richmond authorized by ordinance a railroad company to obstruct a street. Meyer brought the action against the city to recover consequent damages to his property. A demurrer was entered and judgment entered for defendant, and this judgment sustained by the state supreme court of appeals. He averred in his declaration that the city had no right "under the constitution and laws of the land" to authorize such obstruction. He moved the court to set aside the judgment on the ground that the ordinance and the statute authorizing it were void because depriving him of his property without due process of law contrary to the federal constitution, and in his assignment of errors in supreme court of appeals again took the same position. This court said, on its jurisdiction being challenged, that the allegation in his declaration was not sufficient, but on the authority of Chicago, etc., R. R. Co. vs. Chicago, 166 U. S. 226 supra, that the motion to set aside the judgment sufficiently claimed the right to bring it to the attention of the lower court, and the assignment of errors to that of the higher court, and that the effect of the judgment was to declare the right not infringed, that therefore this court had jurisdiction.

In McCullough vs. Virginia, 172 U. S. 102, where the question was whether a statute impaired a contract, this court said when its jurisdiction was again challenged(p. 116-117) "It has been repeatedly held by this court that in reviewing the judgment of the courts of a state, we are not limited to a mere consideration of the language used in the opinion, but may examine and determine what is the real substance and effect of the decision." * * * "Could it be said that the silence of the state court in its opinion changed the scope and effect of the decision? In other words, can it be that the mere language in which the state court phrases its opinion takes from or adds to the jurisdiction of this court to review its judgment? Such a construction would always place it in the power of a state court to determine our jurisdiction."

In Natl. Bank vs. Anderson 172 U. S. 573, the court held that the federal right under a United States statute was sufficiently claimed to sustain its jurisdiction. (Pg. 574) "By exceptions to the admission of certain testimony, taken on trial, and by the assignment of errors in the supreme court."

In Dewey vs. Des Moines, 173 U. S. 193, the action was to set aside a special assessment for paving a city street. The Polk county Iowa court dismissed the petition and the supreme court affirmed the judgment. It was assigned as error in the supreme court that the rendering of a personal judgment against him was contrary to the constitution of the United States in that it was not due process of law. This court held that this sufficiently raised a federal question to give this court jurisdiction, and said further that if another federal question as the validity of the assessment (pg. 197-198) "were so connected with it in substance as to form but another ground or reason for alleging the invalidity of the personal judgment," the assignment would have been sufficient to raise that also.

In Pittsburg, etc., Ry. vs. Loan & Trust Co., 172 U. S. 493, the question was as to whether certain foreclosure proceedings in the circuit court of the United States divested the lien created by certain bonds. The defendant Railway Company in its answer alleged that if a lien at any time attached to the property in question to secure the bonds, such lien was discharged by such foreclosure proceedings. This court said (pg. 507), "This, it would seem, was such an assertion of a right and title under an 'authority exercised under the United States' as gives this court jurisdiction to re-examine the final judgment of the state court. Rev. Stat. 709."

In Illinois Central Railroad vs. Chicago, 176 U. S. 646, plaintiff's bill was to secure an injunction to restrain the city from interfering with its right to fill certain lands of the shallow waters of Lake Michigan for railroad purposes. The trial court denied the injunction and dismissed the bill and the supreme court affirmed the decree. The bill alleged that the plaintiff's charter gave it the right to use these lands and that any law of the state of Illinois or any decree of any court thereof which denies or impairs that right, impairs the obligation of the contract created by its charter. No other mention of any federal question was made in the record yet the court said (pg. 657) "We are of the opinion that the federal question in this case was properly set up in the record" and denied the motion to dismiss.

In Sully vs. American Natl. Bank, 178 U. S. 289, there was a gen
eral creditors bill against the Carnegie Land Co. A decree was en
tered adjudging that one Carhart, a non-resident, was entitled to re
cover on certain bonds but subject to claims of the residents of Ten
nessee. The case was taken from the trial court to the court of chan
cery appeals and from there to the state supreme court of Tennessee
where it was modified and affirmed. In this last court Carhart claime
for the first time that the state statute on which the decree was base
violated the provision of the federal constitution, declaring that th
citizens of each state shall be entitled to all the privileges and immu
nities of the citizens in the several states. It was objected that th
question was raised too late, but this court said (pg. 298) "In regard t
the objection that even Carhart has raised the question too late, w
think it is without foundation. He raised it in the supreme court, an
that court decided it against him, not on the ground that he had no
raised it in the lower court, but on its merits."

In Jacobs vs. Marks, 182, U. S. 583, the action was for deceit, i
the circuit court of Cook county, Illinois. Defendant pleaded in ba
the settlement of a former suit in a Michigan court. On the trial de
fendant asked for an instruction that the former suit, if found involv
ing the same controversy, was a bar to recovery. On the motion for
new trial defendant claimed that the verdict was contrary to the federa
constitution because it failed to give due faith and credit to the forme
judgment. On appeal both to the appellant and supreme court it wa
in each case assigned as error that the circuit court failed to give du
faith and credit to the former proceedings as required by the constitu
tion of the United States. This court said the question was sufficientl
raised and denied a motion to dismiss.

In Rothschild vs. Knight, 184 U. S. 334, an action for goods sol
and delivered, was brought in the Superior court of Hampden county
Massachusetts. No federal question was raised in that court, but o
appeal to the supreme court it was assigned as error in various form
that the proceedings below were in violation of the rights secured b
the federal constitution. The supreme court sent a rescript to the su
perior court affirming the judgment and the writ of error here was di
rected to the superior court.

In denying a motion to dismiss this court said (pg. 339) "A mo
tion is made to dismiss the writ of error upon the ground that no federa
question was raised in the superior court. Federal questions were
raised, however, on writ of error to the supreme court, and that we
think was a sufficient claim," citing Meyer vs. Richmond, Arrowsmith
vs. Harmoning and Sully vs. American Natl. Bank, supra.

In National F. & P. Works vs. Oconto W. S. Co., 183 U. S. 216
in an action brought in the state court to enforce a decree obtained in
a mechanics lien suit, a decree of the federal court was pleaded by de
fendant in bar. No federal question was raised in the state court in
any other way. This court said (pg. 233) "As it is thus demonstrated
that the determination whether the court below correctly applied the
plea of *res judicata* necessitates our deciding whether due effect was
given to the decree in the mechanic's lien suit, a federal question is pre
sented which it is our duty to determine."

In Missouri, K. & T. R. Co. vs. Elliott, 184 U. S. 530, the question was as to recovering attorney's fees on an action in the state court on an injunction bond given in a suit in the United States circuit court. Such fees were allowed and the Kansas City court of appeals affirmed the judgment. On motion for rehearing in that court it was contended that in an action in a state court on a bond given in a United States court, the state court was bound to apply to such bond the rule prevailing in the courts of equity of the United States, viz: that attorney's fees are not a proper element of damages. That court distinctly passed upon and denied this claim and at the same time stated in the opinion that the decision involved no federal question. It was claimed that this court had no jurisdiction because the federal claim was made too late, and that the state court had, as itself stated, passed upon no federal question. But this court said it was not too late because actually passed upon by the state court, and (pg. 535) "The fact that the state court, whilst deciding the federal question erroneously held that it was not a federal one, does not take the case out of the rule that, where a federal question has been decided below, jurisdiction exists to review," and said again, citing Chicago B. & Q. R. Co. vs. Chicago, 166 U. S. 226, supra, (pg. 534) "All that is essential is that the federal questions must be presented to the state court in such a manner as to bring them to the attention of that tribunal."

In Erie Railroad vs. Purdy, 22 Sup. Ct. Rep. 605, this court again held that it is sufficient, though the federal question is not presented in the trial court, if it is presented in the highest court of the state and said (pg. 607) "If the highest court of the state, by its final judgment, sustains the validity of a state enactment, drawn in question there as repugnant to the constitution, treaties, or laws, of the United States, or denies a right, privilege, or immunity specially set up or claimed in that court *for the first time* under the constitution, or any treaty, statute, or authority exercised under the United States, this court could review that judgment, *although no federal question was distinctly raised or insisted upon in the trial court.*"

In Bank vs. Farnum, 176 U. S. 640, supra, the facts are identical with the case at bar on this question of jurisdiction, and the record also with this exception, in the report of that case in the state court (20 R. I. 467) it appears that the complaint alleged, just as here that by the decisions of the home court the liability is "contractual, several and transitory," but the pleader seems to have added (pg. 467) "that having been so decided, under the provisions of the constitution of the United States an action on such liability may be had in this state." This seems to me to be a conclusion of law merely, and to add nothing to the pleading. For if it is true that by the decisions of the home court the cause of action is contractual and transitory, as it is certainly pleaded here (43-45), that is itself an assertion of the federal right, for it follows as an inevitable conclusion of law that under the federal constitution "an action on such liability may be had in Wisconsin." I think Bank vs. Farnum decides that the federal question is sufficiently claimed in the complaint at bar.

Plaintiffs in error respectfully submit that the supreme court of the state of Wiscinsin erred in this decision, and denied them a federal

right, and that such federal right was duly claimed. The judgment of that court should be reversed.

Dated, September 8th, 1902.

FRED. W. REED,
Attorney for Plaintiffs in Error,
Minneapolis, Minnesota

Fred. G. Coldren.

No. 243, 180
Sup. Ct. Brief

Office Supreme Court U. S.
FILED
JUN 10 1902

Supreme Court of the United States

OCTOBER TERM, 1901.

Filed June 10, 1902

A. C. FINNEY as Receiver, &c., et al.,

Plaintiffs in Error,

v.

MARY A. GUY, &c.,

Defendant in Error.

Affidavit and Brief in Opposition to Application for Certiorari

Affidavit of John W. Bashford.
Brief in Opposition to Application.

R. M. BASHFORD,
Attorney and of Counsel for Defendant in Error.

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1901.

No. 443.

A. C. FINNEY, et al.,
Plaintiffs in Error,

vs.

MARY A. GUY,
Defendant in Error.

STATE OF WISCONSIN, } ss.
ST. CROIX COUNTY, }

John W. Bashford, being by me first duly sworn, deposes and says that he is the attorney for Mary A. Guy, the defendant in the above entitled action, that the argument in the case before the Hon. A. J. Vinje took place at Ellsworth, Pierce county, before said court on the 30th day of June, 1899, that what took place at said time is a matter of record; that under the rules and practice of said circuit courts of the state of Wisconsin the record in the case is the best and only evidence considered by the supreme court unless a bill of exceptions is duly made and settled as required by law. That within the time required by law the defendant duly appealed to the supreme court of the state of Wisconsin from the order of the Hon. A. J. Vinje, circuit judge,

all of which more fully appears in volume 106 of the Supreme Court Reports of the State of Wisconsin, page 256; that the supreme court of the state of Wisconsin as appears from the records of said case duly remanded the same to the lower courts for further proceeding according to law as affiant now remembers, reference being made to the original order for more particular certainty; that thereafter and within the time required by law the original record was duly transmitted by the clerk of the supreme court to the clerk of the circuit court for Pierce county; that thereafter and on the 7th day of May, 1900, the plaintiff duly applied to the circuit court of Pierce county for leave to serve an amended complaint. That the proposed amended complaint was the same as the original with this exception that the word "amended" was inserted after the word "their" in the first line of said complaint and that the following allegation as the 18th paragraph of said complaint was added: "That under and by virtue of the said constitutional provisions and laws of the state of Minnesota, defendant, by so organizing said corporation and by becoming a stockholder therein, agreed to assume and did assume liability for the debts of said bank to to the amount of double the par value of defendant's stock, and agreed to pay, for the benefit of the creditors of said bank, such sum as might be necessary to pay said debts, after the proceeds of the corporate assets had been so applied, not to exceed double the amount of the par value of such stock, and that under said constitution and laws there is due and owing the creditors of said bank, the plaintiffs herein, from the defendant Mary A. Guy, as such stockholder, the sum of $3,800.00 with in-

terest on same since April 28th, 1897, at the rate of seven per cent. per annum, to apply toward the payment of said judgment so recovered in favor of said creditors of said bank, plaintiffs herein, and that no part of the same has ever been paid; that for the courts of Wisconsin to refuse to enforce said judgment and decree is contrary to the constitution and laws of the United States, but more especially in this, that by the constitution and laws of the United States the said judgment and decree must be given the same force and effect in the state of Wisconsin that it has in the state of Minnesota, and that to refuse to enforcesaid judgment and decree against said defendant in the state of Wisconsin, is contrary to the constitution and laws of the United States in that it does not give full faith and credit in said state of Wisconsin to the public records and judicial proceedings of the state of Minnesota, and does not give to such records and judicial proceedings such faith and credit in the courts of Wisconsin as they have by law and usage in the courts of Minnesota." Which application was duly denied by the court and an order denying the same was duly entered on the 2nd day of June, 1900, a copy of which said order together with a notice of entry thereof is hereunto annexed and marked Exhibit "A."

That thereafter the plaintiff obtained from the court an order to show cause returnable on the 4th day of September, 1900, at the village of Ellsworth, Pierce county, why the plaintiff should not be granted leave to renew his motion to amend his complaint and why the order dated June 2nd, 1900, should not be vacated, a copy of said notice to show cause is hereto annexed and made a part of this affidavit and is marked Exhibit "B"; that

after a full hearing on said order the court denied the plaintiff's motion, that said order is still in force and has not been appealed from.

That thereafter the plaintiff noticed the original demurer for argument and on the hearing the plaintiff was represented by F. M. White and F. W. Reed who declined to argue said demurrer, whereopon the court made a motion dismissing the action, that the plaintiff thereafter appealed from the judgment entered dismissing the action.

Affiant further says that no bill of exceptions was settled in said action, that the clerk of the circuit court transmitted to the clerk of the supreme court of the state of Wisconsin such records and papers as the plaintiff desired, that the briefs of the attorney's in the circuit court are no part of the record, that no copy of any papers has ever been served upon the affiant except the printed copy of the case served herein.

JOHN W. BASHFORD.

Subscribed and sworn to before me this 8th day of January, 1902.

J. H. WALKER,
Notary Public, St. Croix County, Wisconsin.
[NOTARIAL SEAL] *My commission expires July 16th, 1905.*

EXHIBIT A.

CIRCUIT COURT, PIERCE COUNTY.

A. C. Finney, et al.,
Plaintiffs,
vs.
Mary A. Guy and Mary A Guy as executrix and sole residuary legatee under the will of Charles V. Guy, deceased,
Defendants.

To F. M. White and F. W. Reed, attorneys for plaintiffs.

Please take notice that an order was entered in the above entitled action in favor of the defendants and against the plaintiffs, of which the annexed is a true copy, in the office of the clerk of the circuit court, county of Pierce, on the 2d day of June, A. D. 1900.

JOHN W. BASHFORD,
Attorney for Defendants.

STATE OF WISCONSIN, CIRCUIT COURT FOR PIERCE COUNTY.

[Title of case.]

The plaintiffs above named having moved the court for leave to amend the complaint, a copy of which was attached to the notice of motion which was served on John W. Bashford, Esq., the attorney for the defendants herein, that the same should stand as the complaint in said cause coming on to be heard before Hon. E. W. Helms, at his chambers in the city of Hudson, St. Croix county, Wisconsin on the 7th day of May, 1900; F. M. White, Esq., and Fred. W. Reed, Esq., appearing for the plaintiffs, and John W. Bashford, Esq., appearing for the defendants. After hearing arguments of Fred W. Reed, Esq., in favor of said motion, and John W. Bashford, Esq., in opposition thereto.

Now Therefore, on motion of John W. Bashford, Esq., the attorney for the defendants herein, it is ordered that the plaintiffs' application to amend their complaint be and the same is hereby denied with ten dollars costs.

Dated Hudson, Wis., June 2, 1900.

E. W. HELMS,
Circuit Judge.

To the above and foregoing order the plaintiffs duly except.

Dated Hudson, Wis., June 2, 1900.

E. W. HELMS,
Circuit Judge.

EXHIBIT B.

State of Wisconsin. } In Circuit Court.
County of Pierce. }

A. C. Finney, et al.,
Plaintiffs,
vs.
Mary A. Guy,
Defendant.
} ORDER.

On the files and records in said cause, and on the annexed affidavit of Fred W. Reed, and on the stipulation extending the time for the defendants to answer herein, and on the annexed amended complaint and notice of application to amend thereto attached, and on motion of Fred W. Reed and F. M. White, attorneys for the plaintiff in the above entitled cause,

It is hereby ordered, that plaintiffs be granted leave to renew their motion to amend their complaint herein, and to have the annexed complaint stand as the amended complaint in said cause. And it is further

Ordered, that said defendant be and appear before

said court at a special term thereof to be held at the court house in the village of Ellsworth in said county of Pierce and state of Wisconsin, on the 4th day of September, A. D. 1900, at 2 o'clock P. M. of said day, or as soon thereafter as counsel can be heard, and show cause, if any she have, why the order heretofore made by the judge at chambers on June 2d, 1900, denying plaintiff's application to amend their complaint should not be vacated, and why the plaintiffs should not be allowed to amend their complaint, and why the amended complaint hereto attached should not be and stand as the complaint in said cause.

Let this order and said affidavit be served upon said defendant by leaving a copy thereof with John W. Bashford, Esq., attorney for said defendant, at least 10 days prior to the time of said hearing.

Dated August 10th, 1900.

E. W. HELMS,
Circuit Judge.

DEFENDANT'S BRIEF ON PLAINTIFF'S APPLICATION FOR CERTIORARI.

Plaintiffs in error upon filing in this court the writ of error from the Supreme Court of Wisconsin in the above entitled cause, immediately took steps to procure a further return, and the final result is the application for the writ of certiorari now under consideration. It has been the purpose of counsel for defendant after the transcript was printed to seasonably submit a motion to dismiss the writ or affirm the judgment, but it has been assumed that such motion would not be entertained pending proceedings to perfect the record. The only question now directly presented is whether plaintiffs' application should be granted, but the jurisdiction of this court must be considered as incident to the determination thereof.

I.

The record of the State Court.

This action was commenced in the circuit court for Pierce county, Wisconsin, March 28th, 1899. The complaint then served is now on file herein as part of the transcript. A demurrer thereto was interposed by the defendant upon the grounds: 1st, that the circuit court of Pierce county had no jurisdiction of the subject matter of said action; 2d, that the plaintiffs have not the legal capacity to sue; 3rd, that there is a defect in parties plaintiff in this, that it appears upon the face of the complaint that the plaintiffs, except A. C. Finney as re-

ceiver, have no interest in the subject matter of said action; 4th, that there is a defect in parties defendant in this, that Mary C. Guy, as executor and sole legatee under the will of Charles A. Guy, deceased, is not a necessary and proper party defendant; 5th, that several causes of action have been improperly united; 6th, that this action was not commenced within the time limited by law, etc.; 7th, that the complaint does not state facts sufficient to constitute a cause of action. The circuit court overruled the demurrer and the defendant appealed from the order. The supreme court reversed the order overruling the demurrer and the report of the case with the opinion of the court is found in 106 Wis. 256. The cause was remanded for further proceedings and plaintiff thereupon asked to amend their complaint setting up for the first time a Federal question in their pleadings which application was denied and no appeal was taken from this order. Thereupon the demurrer to the original complaint was sustained and judgment was entered dismissing the action. From this judgment an appeal was taken to the supreme court of Wisconsin. This judgment was affirmed by the supreme court and a writ of error was allowed by the Chief Justice to this court. There is no bill of exceptions on this appeal by the plaintiffs and none was necessary under the statutes, decisions and practice in the state of Wisconsin. Section 3050 Revised Statutes of Wisconsin provides that upon appeal from a judgment the clerk of the circuit court shall forthwith transmit to the supreme court the judgment roll, the notice of appeal and the undertaking thereon and annex his certificate. Section 2898 of the Revised Statutes of Wisconsin provides that

the judgment roll in such case shall consist of the summons and complaint, proof of service thereof, the pleading on the part of the defendant, a copy of the judgment and all orders and papers in any way involving the merits and necessarily affecting the judgment. Section 2873 of the Revised Statutes of Wisconsin provides that the bill of exceptions when settled and signed by the judge and filed with the clerk shall be a part of the judgment roll. Section 3070 of the Revised Statutes of Wisconsin provides that upon appeal from a judgment the supreme court may review any intermediate order which involves the merits and necessarily affects the judgment appearing upon the record whether the same was excepted to or not.

An appeal from a judgment dismissing a complaint brings up the order sustaining a demurrer upon which the judgment is founded. *Moritz v. Splitt*, 55 Wis. 441; *American, etc., Co. v. Gurnee*, 44 Wis. 49. It does not bring up for review interlocutory orders which do not involve the merits and necessarily affect the judgment unless excepted to and with the papers upon which they are founded embodied in a bill of exceptions. *Donkle v. Milem*, 88 Wis. 33, 37; *Keller v. Gilman*, 96 Wis. 445; *Midlothian I. M. Co. v. Dahlby*, 108 Wis. 195. Section 2870 of the Revised Statutes of Wisconsin makes provision for exceptions to orders when the trial is by the court. There written exceptions must be embraced in a bill of exceptions. Section 2872 of the Revised Statutes of Wisconsin provides for exceptions to orders which must be in writing and filed with the clerk within the time limited. This section provides that no exception will be necessary to review an order properly a part of the judgment roll in an action.

The trial court in settling a bill of exceptions is required to strike out all the evidence and other matters which should not be necessarily inserted therein. Revised Statutes of Wiscoesin 1898, page 2026, rule of circuit court, No. 24, section 1. Where there is no bill of exceptions the trial judge has nothing to do with the preparation of the record and has no control over the same. A motion addressed to the supreme court of the state in which the appeal is pending is the only method of correcting the record. *Hoff v. Olsen*, 101 Wis. 118, 123. The supreme court of the state will take no notice of papers and will give no consideration of matters not properly of record. *Watson v. Milwaukee*, 107 Wis. 328.

Without a return in compliance with the statute the appeal cannot be entertained by the supreme court. The record is treated as a nullity. *Sutton v. Railway*, 106 Wis. 225; *Gagen v. Janesville*, 108 Wis. 662. No bill of exceptions was necessary upon this appeal of the plaintiff from the judgment of the circuit court to the supreme court of the state of Wisconsin. *Iron River Railway v. Bayfield Co.*, 106 Wis. 587; *Dow v. Deissner*, 105 Wis. 385.

From the foregoing references to the statutes and decisions and rules and practice of the state of Wisconsin, it is clear that the plaintiffs have no right to have embraced in this return the papers referred to in the petition for writ of certiorari.

The rules of the supreme court of the state of Wisconsin quoted by the plaintiffs, do provide for assignments of error, and in pursuance thereof, four errors were assigned, the first three of which only were pertinent or material. The fourth so-called assignment of

writ of error, or in an assignment of errors after judgment in a state court is insufficient to give the supreme court jurisdiction; it must appear on the record that such title, right, privilege or immunity was specially set up and claimed at the proper time and in the proper way. *Leeper v. Texas*, 139 U. S. 462; *Chapin v. Fye*, 179 U. S. 127.

The matter decided by the supreme court of Wisconsin was one of state rule and practice, and if a Federal question was involved at all it was only incidental to a determination of the local question of what the state procedure required. *Miller's Executors v. Swan*, 150 U. S. 132, 137.

When the supreme court is of the opinion that the Federal question was erroneously decided, it will still affirm the judgment, if it appears upon another ground, even if such ground was not considered by the state court, the decision was correct. *Murdock v. Memphis*, 20 Wall. 590, 636.

Whenever a court of one state is required to ascertain what effect the public act of another state has in that other state the law must be proved as a fact and in order to be proved it must be properly set out in the pleading. *Lloyd v. Matthews*, 155 U. S. 222.

Great Western Telegraph Co. v. Purdy, 162 U. S. 329, was an action by a receiver appointed by the circuit court of Cook county, Illinois, to collect the unpaid subscriptions of stockholders, the amount of which was adjudged and fixed by the decree of the Illinois court. The suit was originally commenced by Purdy against the corporation, and the decree was entered upon a supplemental bill subsequently filed. The supreme

court of the state of Iowa held that the claim against Purdy was barred by the statute of limitations, and the case was brought to this court by writ of error and it was here held that the judgment of the supreme court of Iowa, construing the statute of limitations of that state and holding that the cause of action accrued against the defendant at the date of his contract of subscription and not at the date of the order of assessment, involved no Federal question and was not reviewable by this court. On page 338, the court say: "This action was not brought on a judgment for there had been no judgment." In other words this court held that the defendant, Purdy, was not bound by a decree in an action instituted by himself entered upon a supplemental bill filed without notice to him.

With respect to the question of unpaid subscriptions the rule is generally held that a judgment against the corporation is binding upon the stockholders; while, on the other hand, it is the exception to enforce any such rule as against the stockholders where the suit is brought to enforce the statutory liability. This question is considered by the supreme court of Wisconsin in the opinion already referred to, 106 Wis. 256, 273. On page 274 the court says: "The corporation is not made a defendant in the principal action as a representative of the stockholders in any sense. It is joined of necessity only where there are corporate assets which ought to be applied to the payment of the debts. Otherwise, it is a proper party, but only for the purpose of establishing against it as a finality the amount of the indebtedness for which the stockholders are liable. The primary right to be adjudicated in such action is the stock-

holders' liability. As an incident thereto, where there are corporate assets which should be applied to the payment of the indebtedness, the corporation must be brought in for the purpose of sequestrating and reaching such assets. If there are no such assets the corporation need not be made a party at all." The same rule has been announced in Minnesota *In re People's L. S. Ins. Co.*, 56 Minn. 180; *Minnesota B. Co. v. City Bank*, 66 Minn. 441.

It is misleading therefore for plaintiffs' counsel to state that there is a judgment in the Minnesota court against the defendant in error which the supreme court of Wisconsin has refused to recognize.

In the same opinion (p. 275) the supreme court of Wisconsin refers to the case of *Hanson v. Davison*, 73 Minn. 454, which is relied upon especially by plaintiffs in error. This decision was announced in 1898, and practically overruled former decisions. This was five years after this suit was instituted and after the rights of the parties had become fixed. In this connection it is said in the opinion of the Wisconsin court (p. 275):

"To give effect to the Minnesota statutes as now construed by its highest tribunal would be unjust to the defendant, because it would, in effect, make a liability enforceable here that was not enforceable when it accrued and that could not have been enforced under the law of Minnesota as it existed prior thereto during the time the defendant was a member of the corporation; it would subject defendant to substantially an independent action to enforce her liability, while, when it accrued, it was enforceable only in an action in equity at the domicile of the corporation, having sole jurisdiction of

the entire subject of stockholders' liabilities to the creditors of the corporation, and of all questions necessarily incident thereto; it would conclude her, as to questions vital to her liability, by a judgment rendered in an action to which she was not a party; whereas when she became a member of the corporation she did so in contemplation of a liability with certain incidents, she would be burdened with materially different incidents; whereas the plain purpose of the law is that all stockholders shall stand equally as regards rights and remedies, it would subject the defendant to a much more burdensome remedy, before her ultimate rights could be determined and enforced, than it does the resident stockholders; it would result in giving to resident stockholders their day in court and denying that valuable right to the defendant; it would give effect to a law which is contrary to the policy of the law of this state. For these and many other reasons that might be named, the law of Minnesota, as at present understood, should not be made effective here. Clearly the court cannot, consistent with the rules of comity, give effect to a doctrine which, if recognized, would lead to the oppressive results mentioned." On page 277, it is said further: "The doctrine of the Hanson case, 73 Minn., 454, is not sustained, in its main features, in the home court, upon any other theory than that the corporation in the original action stands for all the absent members, and that a judgment as to it, after it has ceased to exist for any practical purpose, concludes such absent members on questions in which the corporation has no interest and as to which it is not bound to protect their interests."

The judgment fixing the liability of stockholders in

the Minnesota court was entered April 28th, 1897, a year prior to the decision of *Hanson v. Davison.* The supreme court of Wisconsin in holding that the rights of the defendant were to be determined by the state of the law as construed by the highest court of Minnesota at the time contract was entered into and the liability became fixed is supported by repeated decisions of this court. The rights of the creditors and stockholders had been finally determined by that judgment under the statutes and decisions of the supreme court of Minnesota, then existing, and the obligation of the stockholders could not thereafter be enlarged by a subsequent decision in another cause by the supreme court of Minnesota construing this statute. The settled construction of a statute, so far as contract rights thereunder are acquired, is as much a part of the statute as the text itself, and a change of decision is the same in its effect on pre-existing contracts as a repeal or an amendment of a legislative enactment.

Douglas v. Pike County, 101 U. S. 677; *Rowan v. Rumels,* 5 How. 134; *Gepcke v. Dubuque,* 1 Wall. 175; *Chicago v. Sheldon,* 9 Wall. 50; *Olcott v. Supervisors,* 16 Wall. 678; *Chicago Life Ins. Co. v. Needles,* 113 U. S. 574; *Anderson v. Santa Anna,* 116 U. S. 356; *Bostwick v. Brinkerhoff,* 106 U. S. 3; *Johnson v. Kieth,* 117 U. S. 199; *German Bank v. Franklin Co.,* 128 U. S. 526, 539; *Knox Co. v. North National Bank,* 147 U. S. 91, 99; *Bacon v. Texas,* 163 U. S. 207, 221; *Wade v. Travis Co.,* 174 U. S. 499. 509; *Loeb v. Columbia Township Trustees,* 179 U. S. 472.

The question here involved is not one of local law to be settled by the decisions of the Minnesota court but is one of general law to be determined by reference to all

the authorities and a consideration of the principles underlying the contract relations between the parties. *Baltimore & Ohio R. R. Co. v. Baugh*, 149 U. S. 368.

As already stated one ground of demurrer on behalf of the defendant to the plaintiffs' complaint was that the action was barred by the statute of limitations.

An action on a contract express or implied or an action upon a liability created by statute is barred by the six years statute in Minnesota. General Statutes of Minn. 1894, sec. 5136. Wisconsin has a similar statute and it has been applied to an action to enforce the statutory liability of a stockholder in a corporation. *Sleeper v. Goodwin*, 67 Wis. 586.

The plaintiffs' complaint, which is part of the record, on file here, shows that about one-half the indebtedness of the bank accrued prior to March 28th, 1893, and all of it prior to June 15th, 1893, though as to part of the latter the exact date is not shown. This action was commenced March 28, 1899, and all claims accruing prior to March, 1893, were barred by the statute. This question was not considered by the supreme court of Wisconsin as it held the complaint insufficient upon other grounds which are stated in the opinion. It is stated in the complaint that the statutory liability of a stockholder in a Minnesota corporation is direct, primary and principal and not that of a surety. The right of action against a stockholder in favor of a creditor would accrue therefore at the time when the debt became due from the corporation. In a suit to enforce this liability it is incumbent upon the plaintiff to show that he belongs to the class of creditors who might assert a claim against the defendant. In an action against an in-

dorser upon a negotiable instrument it is incumbent upon the plaintiff to allege that proper notice of dishonor had been given in order to fix the liability of the defendant. *Continental Nat. Bank v. McGeoch*, 73 Wis. 332. In this case, therefore, it is incumbent upon the plaintiffs to show that they have a subsisting valid claim against the defendant growing out of the liability created by the statute of Minnesota. In such case the statute of Minnesota is not only a matter of defense,—it must be negatived in the complaint in order to show that the plaintiffs have a cause of action. It is an exception to the general rule to allow a creditor to sue before he has reduced his claim to judgment. *North Hudson Mutt. Bldg. & Loan Assn. v. Childs*, 86 Wis, 292. The complaint in an action to enforce a liability of this character is strictly construed and it is fatally defective if it fails to state the facts which lay the foundation for the plaintiffs' right to recover. *3 Thompson on Corporations*, §§ 4327, 4338; *Germania Iron M. Co. v. King*, 94 Wis. 439.

It further appears from the averments of the plaintiffs' complaint that the order of the court appointing the receiver clothed him with authority to compromise and settle claims against stockholders growing out of the statutory liabilities, "if he shall deem it advisable and to the best interests of the plaintiff and the creditors who have joined in this action" so to do. It is also alleged that the receiver has exercised this power in numerous instances and has released a number of stockholders residing in Minnesota and others residing in Wisconsin from their liability to contribute to the payment of the creditors, and it is sought in this suit to cut

off the right of the defendant from claiming contribution against such stockholders. This proceeding is of a much more flagrant character than that condemned in *Great Western Telegraph Co. v. Burnham*, 79 Wis., 47. There the circuit court for Cook county, Illinois, had levied an assessment upon the stockholders of the corporation for their unpaid subscriptions which was unequal in its character. The fund realized was not sufficient to pay all the debts. Some years afterwards, the court directed a second assessment to be made uniformly upon all the stockholders, without taking into consideration the inequality of the first assessment. A suit to enforce the second assessment against a stockholder in Wisconsin was commenced in the circuit court for Milwaukee county. The complaint contained a full statement of the facts, and it was demurred to, and the demurrer was sustained. It there affirmatively appeared upon the face of the complaint that some of the stockholders had paid forty per cent. of their subscriptions and some only two per cent.; and that the assessment sued upon was a horizontal assessment of thirty-five per cent. upon all. This was held to be conclusively unequal and unfair, and that the plaintiff had, by his own allegations impeached and discredited the decree of the court, notwithstanding the fact that the assessment was made by a court of competent jurisdiction. The decree of the Minnesota court is less worthy of credit, for instead of making the settlement, it delegated the power to a receiver to make such compromise as to him would seem advisable. The Illinois court had not sought to discharge or release the stockholders who had been so favored but they were still subject to suit for contribution by any

stockholder who might pay more than his share. Here the Minnesota court has discharged the stockholders with whom settlements have been made and debarred the defendant from enforcing any claim for contribution, in case she is required to pay the full amount of the liability. The court can indulge in no presumption in support of this complaint to the effect that if from the claims released by the plaintiffs are deducted those which have been barred as to defendant, the amount of the claims remaining will equal the amount of the liability of all the stockholders. The extent of the liability and the right of the plaintiffs to enforce it lies at the threshold of this suit; and if the complaint does not by proper averment set forth a valid subsisting claim against the defendant which she ought in equity to pay, ratably with the other stockholders, and the enforcement of which will not prejudice her rights, it fails to state a cause of action. If the procedure adopted will not enable the court to ascertain the amount of subsisting claims and to enforce payment upon equitable principles and preserve the rights of the defendant as against the other stockholders, then the remedy provided is inadequate and the complaint should be dismissed as a question of procedure alone.

The courts of Minnesota have enforced the statutory liability there created within their own jurisdiction, but they have not enforced a statutory liability created by the legislature of another state against citizens of their own state, or even the common law liability of the stockholder, resident in that state, of a foreign corporation.

First National Bank v. Gustin, etc., Mining Co., 42 Minn., 327, was a suit to enforce the common law liability of a

stockholder for unpaid subscriptions, and it was there held that the remedy is governed by the law of the forum and that the liability could not be enforced in that suit for reasons stated.

Rule v. Omega S. & G. Co., 64 Minn. 326, was a suit by a creditor of an insolvent foreign corporation to enforce a common law liability of a stockholder. It is there held that the remedy provided by the Minnesota statute is not applicable where it is sought to reach such unpaid subscription to the stock of a foreign corporation.

Hanson v. Davison, 73 Minn. 454, relied upon by plaintiffs' counsel and criticised in the opinion of the supreme court of Wisconsin was an action to enforce the statutory liability of a stockholder in a Minnesota corporation against a non-resident who had property in the state, and it was held that a separate action could not be maintained, as it was not proper or necessary, as the property could be sequestered in the original suit. With respect to that case it is to be observed that after the property of the defendant, situated in Minnesota, was attached, she appeared in the action. It was there held that while the liability was several the stockholders may, and upon equitable consideration ought to be joined in one action to enforce this several liability. The proceeding is therefore joint as to procedure. It is not a liability that can be enforced by one creditor against any single stockholder. However, it is said, an ancillary proceeding may be instituted to reach the property of a stockholder which has been discovered subsequent to the decree. This, of course, refers to property situated within the jurisdiction. The court say in the opinion that there is no difference in prin-

ciple between an action to enforce unpaid subscription and one to enforce a stockholder's liability, and that a judgment against the corporation is an individual judgment against the stockholders in their corporate capacity. This overlooks entirely the distinction with respect to the two liabilities recognized by all the courts including that of Minnesota in numerous decisions. The unpaid subscription is an obligation arising from contract and must be recovered in the right of the corporation. The statutory liability cannot be enforced by the corporation or through its right or by its assignee or receiver. It is an obligation of the stockholders to the creditors and must be enforced for the benefit of the latter in a proper proceeding instituted for that purpose. This is the nature of the liability in Wisconsin and in Minnesota. It is a limited, joint and several liability which attaches when the debt is contracted by the corporation. It is limited by the amount of the capital stock held by the stockholder. It is *several* in the sense that it is unequal and that there can be no judgment *in solido* against one shareholder, but joint in the sense that a solvent shareholder is liable up to the amount of his stock and beyond his ratable proportion to pay the share of an insolvent stockholder, for which he may have contribution against other solvent members; and it is joint in respect to procedure, as all stockholders must be enjoined in an action to enforce such liability brought by all the creditors or in their behalf. *Coleman v. White*, 14 Wis. 700; *Gager v. Marsden*, 101 Wis. 598; *Booth v. Dear*, 96 Wis. 516; *Terry v. Little*, 101 U. S. 216.

A statutory right coupled with a remedy to make it effective is enforceable only within the jurisdiction of

its creation and the statutory remedy is exclusive. *Pollard v. Bailey*, 20 Wall. 520; *Fourth Nat. Bank v. Francklyn*, 120 U. S. 747; *Huntington v. Attril*, 146 U. S. 657.

The subject is fully discussed in *Pollard v. Bailey*, *supra*, and the decision there reached has been uniformly followed. Chief Justice Waite, speaking for the court, said: "The individual liability of stockholders in a corporation for the payment of its debts is always a creature of statute. At common law it does not exist. The statute which creates it may also declare the purpose of its creation, and provide for the manner of its enforcement. Here the liability and the remedy were created by the same statute. This being so the remedy provided is exclusive of all others. A general liability created by statute without a remedy may be enforced by an appropriate common law action. But where the provision for a special remedy, that remedy, and that alone, must be employed." This and other decisions of like character are cited and followed by the supreme court of Wisconsin in the opinion in this action.

The liability created by the Minnesota statute providing a remedy for its enforcement is not at all of the same character as that created by the Kansas law which was under consideration in *Whitman v. Oxford National Bank*, 176 U. S., 559. The liability last referred to was in the nature of a guaranty of collection and the stockholder might be sued individually wherever found by any creditor of the corporation who had recovered judgment against the latter and had his execution returned unsatisfied. This distinction is recognized by this court in the decisions cited and in *Bell v. Farwell*, 176 Ill., 489;

Bank v. Ellis,132 Mass., 39, and in Thompson on Corporations, § 3055.

The liability created by the Minnesota statutes against the stockholder, resident in Wisconsin, cannot be enforced in the court of the latter state because the remedy is not applicable. The decision to that effect is not the denial of a Federal right but relates purely to the remedy which is governed by the law of the forum. The writ of error should be dismissed for want of jurisdiction.

Respectfully submitted,

R. M. BASHFORD,

Attorney and of Counsel for Defendant.

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Supreme Court U. S.
FILED
JAN 12 1903
[illegible] McKENNEY,
Clerk.

Brief and Argument on behalf of Defendant in Error.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 180.

A. C. FINNEY, as Receiver, et al.,

Plaintiff in Error,

vs.

MARY A. GUY, Etc.,

Defendant in Error.

IN ERROR TO SUPREME COURT OF WISCONSIN.

ROBERT M. BASHFORD,

Attorney for Defendant in Error.

MADISON, WISCONSIN.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 180.

A. C. FINNEY, et al., PLAINTIFF IN ERROR,

vs.

MARY A. GUY, DEFENDANT IN ERROR.

IN ERROR TO SUPREME COURT OF WISCONSIN.

Brief and Argument on behalf of Defendant in Error.

Plaintiffs in error upon filing in this court the writ of error from the Supreme Court of Wisconsin applied for a writ of certiorari to secure further return, which application was granted. The defendant in error at the same time submitted a motion to dismiss the appeal or to affirm the judgment upon the ground that no Federal question was necessarily involved. This motion was denied without prejudice, and has since been renewed to be argued at the time of the hearing of the cause upon its merits. In support of this motion counsel for defendant in error submits the brief filed herein in support of the original motion and the further points and authorities herein contained. Counsel for plaintiffs in error in his brief upon the merits has argued the question of jurisdiction, and this court might dismiss the appeal or affirm the judgment if of the opinion that no Federal question was necessarily involved although there had been no renewal of the motion by the defendant in error.

Hale v. Lewis, 181 U. S. 473, contains an intimation that the proper practice is for the defendant to move to

dismiss the appeal upon the ground that no Federal question is involved and that rule has been complied with by the motion here submitted. It is to be observed, however, that no such motion was made in that case, but as the question was argued by counsel on both sides, as in this case, the court considered the question and dismissed the appeal.

I.

No Federal Right Involved.

The matter decided by the Supreme Court of Wisconsin was one of state rule and practice, and if a Federal question was involved at all it was only incidental to a determination of the local question of what the state procedure required. *Miller's Executors v. Swan*, 150 U. S. 132, 137.

When the Supreme Court is of the opinion that the Federal question was erroneously decided, it will still affirm the judgment, if it appears upon another ground, even if such ground was not considered by the state court, the decision was correct. *Murdock v. Memphis*, 20 Wall. 590, 636.

If a Federal question was presented to the Supreme Court of Wisconsin, it must have been disclosed by the record on appeal. As shown by a reference to the statutes and decisions of Wisconsin upon the former brief this record consists of the judgment roll, to-wit: the summons and complaint, the proof of service thereof, the demurrer the order sustaining the demurrer, and the judgment. The statements of the trial judge, or the arguments of counsel, or the exceptions to the rulings of the court are no part of this record. This sufficiently appears by the decision of the Supreme Court of Wisconsin on the last appeal, the opinion of Mr. Justice Dodge. (Tran. p. 62.)

Zadig v. Baldwin, 166 U. S. 485, is authority for the statement that the brief and argument of counsel are not sufficient to raise a Federal question. Nor can the certificate of the Chief Justice that upon the argument a Federal right was drawn in question supply the omission. *Yazoo & Miss. R. R. Co. v. Adams*, 180 U. S. 41, 48.

"If it appear from the record upon clear and necessary intendment that a Federal question must have been directly involved, so that the state court could not have given judgment without deciding it that will be sufficient; but resort cannot be had to the expedient of importing into the record the legislation of the state as judicially known to the courts, and holding the validity of such legislation to have been drawn in question, and decision necessarily rendered thereon in arriving at conclusions upon the matters actually presented and considered." *Powell v. Brunswick County*, 150 U. S. 433, 440.

In New Orleans Water Works Co. v. Louisiana, 185 U. S. 336, it is said (p. 344): "It has long been the holding of this court that in order to warrant the exercise of jurisdiction over the judgments of state courts there must be something more than a mere claim that a Federal question exists. There must, in addition to the simple setting up of the claim, be some color therefor, or, in other words, the claim must be of such a character that its mere mention does not show it destitute of merit; there must be some fair ground for asserting its existence, and, in the absence thereof, a writ of error will be dismissed, although the claim of a Federal question was plainly set up."

An examination of the grounds of demurrer will support the conclusion that a Federal right was not necessarily involved in the judgment of the court dismissing the action.

Counsel for plaintiffs in error, on page 11 of his brief, assumes that the demurrer admits not only the facts set out in the complaint but the legal conclusions drawn therefrom by the pleader. Such is not the rule in Wisconsin or in other code states. While a demurrer admits traversable facts it does not admit inferences drawn from them or conclusions of law. *State v. Veeder*, 5 Wis. 339; *Brown v. Phillips*, 71 Wis. 239; *Stedman v. Berlin*, 97 Wis. 605; 6 *Ency. of Plead. & Practice* 336.

The same rule has been stated and followed by this court. *Fogg v. Blair*, 139 U. S. 118, 127; *Kent v. Lake Superior Ship, etc. Co.*, 144 U. S. 75, 91.

The demurrer therefore admits the existence of the decisions and statutes of Minnesota specifically referred to in the complaint, but it does not admit the interpretation

placed upon the law of Minnesota by the pleader or his legal conclusions therefrom. The Supreme Court of Wisconsin was called upon to give consideration to those statutes and decisions and reach its own conclusions as to their import.

We shall now consider the grounds of demurrer so far as we deem them material on this hearing, and endeavor to show that no Federal right was necessarily involved, but that if the question was presented it was correctly decided. The argument will therefore have a bearing upon this motion and upon the merits of the cause.

The contention is made by the counsel for plaintiffs in his brief (p. 28) that after the first decision of the Supreme Court of Wisconsin applications were made to the Circuit Court for leave to amend the complaint by inserting an averment which specificaly presented the Federal question and that the applications were denied. It is admitted, however, that no appeal has ever been taken from either of of those orders, nor were they brought before the Supreme Court for review upon appeal from the final judgment as they might have been under the Wisconsin practice. Wisconsin Statutes 1898 § 3069 provide that an appeal to the Supreme Court may be taken from an order affecting a substantial right in any action, etc.; and § 3070 provides that on appeal from a judgment the Supreme Court may review any intermediate order or determination of the court below which involves the merits and necessarily affects the judgment appearing upon the record returned from the trial court whether excepted to or not. As shown by the brief filed on behalf of the defendant in opposition to the motion for writ of certiorari the applications to amend and the orders denying the same were not parts of the record transmitted to the Supreme Court, and they could not therefore have been considered on the last appeal. Such an order and the matter upon which it is founded does not become a part of the record and cannot be reviewed on appeal from the judgment unless incorporated in a bill of exceptions. *Keller v. Gilman*, 96 Wis, 445. The applications referred to and the orders denying the same instead of establishing the fact that a Federal question was presented should, on the contrary, be treated as *res adjudicata* and as a

waiver or estoppel on the part of the plaintiffs to assert that any such right was necessarily involved. *Hooker v. Brandon*, 66 Wis. 498; *id.*, 75 Wis. 8; *McKenon v. Wolfender*, 78 Wis. 237; *Ray v. Hixon*, 90 Wis. 39; *Keller v. Town of Gilman*, 96 Wis. 445.

The grounds of the demurrer of Mary A. Guy and of Mary A. Guy as executrix, etc., are substantially the same and are, so far as material for consideration here as follows: 1. That the Circuit Court of Pierce County had no jurisdiction of the subject matter. 2. That the plaintiffs have not the legal capacity to sue. 3. That several causes of action have been improperly united. 4. That the action was not commenced within the time limited by law. 5. That the complaint does not state facts sufficient to constitute a cause of action. The discussion of the first four grounds separately will have a direct bearing upon the sufficiency of the complaint considered under the last head.

II.

The Wisconsin Court had no Jurisdiction of the Subject Matter of the Action.

This a suit to enforce the liability of a stockholder in a bank created by the law of Minnesota, and not an action to collect a judgment rendered by a court of that state against the defendant in error. No judgment has been entered against her, or in an action to which she was actually a party personally or in her representative capacity.

It is alleged in the complaint that an action was brought in the Minnesota court in 1894 to enforce the statutory liability of the stockholders of the bank by one creditor suing in behalf of himself and of all the other creditors against the insolvent bank, "and that all the stockholders of said bank were named as parties defendants therein." (Trans. p. 25.) The stockholders as named in the complaint in that action included the name of Mary A. Guy as the holder of three shares of stock, and of Charles V. Guy as the holder of sixteen shares, although it is admitted

that the latter departed this life October 28, 1892. (Trans. p. 21.) Mary A. Guy as residuary legatee was not named as a party, but this point will be noticed under the head of misjoinder. Provision was made in the judgment for the appointment of a receiver (Trans. p. 29), and an order was subsequently entered appointing A. C. Finney, and authorizing him to bring suit in other jurisdictions "in which any of the above named defendant stockholders reside, who are non-residents of the state" for the purpose of enforcing in such jurisdiction "the liability of such parties respectively as stockholders in said Farmers & Merchants Bank to double the amount of stock held by said parties respectively in said bank." (Trans. p. 31.)

The only judgment entered against any person was against the resident stockholders of the bank in the amounts stated in the complaint. (Trans. p. 26.) It is true that this judgment undertook to determine the amount of the indebtedness of the bank, the creditors and the sum due to each, and the stockholders and the amount of their respective subscriptions, but the adjudication with respect to those matters is not material to the question here under consideration.

The nature of the statutory liability of stockholders under the laws of Minnesota and the laws of Wisconsin, which are substantially the same, is fully considered by the Supreme Court of Wisconsin in the decision in this case, 106 Wis. 256, (Trans. p. 43) where the authorities are referred to at length. It is a limited, joint and several liability, which attaches at the time the debt is contracted, in favor of the creditors and against the stockholders to be enforced by a suit in equity brought by one creditor in behalf of himself and all other creditors against all the stockholders. The statute creates the liability and provides the remedy, and while it is immediate and direct and contractual in character, it is not transitory and cannot be enforced in a foreign jurisdiction, unless the procedure can there be applied, and without prejudice to resident stockholders.

The liability is limited to the amount of stock held at the time the suit is brought. It is several in the sense that it is unequal although there can be no judgment *in solido*

against any shareholder. It is joint in the sense that a solvent shareholder is liable up to the amount of his stock and beyond his ratable portion to pay the share of an insolvent stockholder, for which he may have contribution against other solvent members; and it is joint as to procedure, as all the solvent stockholders must be joined in an action to enforce such liability. There is a distinction to be here noted between the liability of a stockholder in a national bank and in a state bank under the Wisconsin and Minnesota statutes. Under the National Banking Act (§ 5151 R. S. U S.), shareholders are individually responsible equally and ratably, and not one for another, for the debts of a national bank. Each shareholder is therefore liable to contribute such share of the whole indebtedness as his stock bears to the total capital stock. That amount cannot be increased by reason of the insolvency of other stockholders. *United States v. Knox*, 102 U. S. 422. This distinction is noted in *Rehbein v. Rahr*, 109 Wis. 136, 150. This furnishes a further ground for holding that the procedure must be joint, and that all stockholders must be parties to the suit.

It may be as well here to note also the distinction between the liability created by the laws of Minnesota and Wisconsin and that created by the Kansas constitution and statutes. Counsel for plaintiffs in error relies largely upon decisions construing the Kansas law to support this suit. He cities *Whitman v. Bank*, 176 U. S. 559, which enforces the liability of a stockholder in a Kansas corporation. In the opinion (p. 566) reference is made to *Plumb v. Bank*, 48 Kan. 484, 486, where it is said: "Under our constitution and statutes, the individual liability stands as a sort of surety for the corporate liability," etc. The liability created by the Kansas law is not that of a surety who may be sued in the same action with the principal debtor, but is more in the nature of the liability of a guarantor for collection. He can only be sued after the creditor has exhausted his remedy against the principal debtor. It is plain that under the Kansas law the liability is not only contractural but is also transitory, as any creditor can sue any shareholder after exhausting his remedy against the corporation. This appears from the decision of this court

in the Whitman case, and subsequent decisions relating to the liability of stockholders in Kansas corporations, and is emphasized by the decisions in New York, Massachusetts and Illinois upon the same subject.

Marshall v. Sherman, 148 N. Y. 9, 42 N. E. 419, holds that the provisions of the Kansas law give a special remedy against stockholders, which can not be enforced in New York. The Supreme Courts of Massachusetts and Illinois held to a different rule upon the ground that the nature of this liability was as above stated and the action transitory.

Bank v. Ellis, 172 Mass. 39, 51 N. E. 207, sustains an action by a creditor against a stockholder in a Kansas corporation on the ground that the action is transitory by reason of the liability there created. In the opinion it is said (p. 210): "This court has many times decided that the statutes of other states creating the liability of stockholders to creditors of a corporation which provide for a suit of a special kind, to which the corporation and all stockholders are to be made parties, will not in general be enforced by the courts of this state. It often happens that the courts of this state could acquire no jurisdiction over the corporation, which is a necessary party, or over many of the stockholders; and the suit itself is sometimes of a kind unknown to our laws. The proper courts of the state under whose laws the corporation is established have full jurisdiction over the corporation. Whether in such a suit such courts can acquire jurisdiction over all the stockholders, wherever they reside, in order to determine their liability under the statutes to which they may be held to have assented in becoming stockholders, it is unnecessary now to consider. . . . The special remedy provided by the statutes must be pursued, and as the statutes of a state have no force, *ex propria vigore*, beyond the territorial limits of the state, the remedy usually must be pursued in the state where the corporation has been established and the statutes passed," citing Massachusetts decisions in support of this proposition and *May v. Black*, 77 Wis. 107. In conclusion the court states that the liability created under the Kansas law was intended to be of such a nature that it might be brought in any court of general jurisdiction over similar actions in any state or country where service ac-

cording to the laws of that state or country could be made upon a stockholder.

Bell v. Farwell, 176 Ill. 489, 52 N. E. 346, adopts the same view with respect to the liability of a stockholder in a Kansas corporation by reason of the nature of the liability there created, distinguishing *Tuttle v. Bank*, 161 Ill. 497, 44 N. E. 984, in which it was held that the liability of a stockholder created by the laws of another state containing a special remedy could not be enforced in a foreign jurisdiction. Those decisions and the cases of *Young v. Farwell*, 139 Ill. 326, and *Patterson v. Lynde*, 112 Ill. 196, cited therein emphasize the proposition that the nature of the liability alone, being in favor of any creditor against any stockholder and similar to that of a surety or guarantor, makes the action transitory and enforcible in a foreign jurisdiction.

This court has not, nor have the courts above referred to overruled decisions holding that where a special remedy is provided, and especially if it contemplates a joint action in favor of all creditors against all stockholders, it can be enforced only in the courts of the state which creates the liability and where the corporation is organized to carry on business.

In *Pollard v. Bailey*, 87 U. S. 520, 527, it is said: "The liability and the remedy were created by the same statute. This being so the remedy provided is exclusive of all others. A general liability created by statute without a remedy may be enforced by an appropriate common law action."

May v. Black, 77 Wis. 102, cited in the Massachusetts decision, holds that the liability created by the statute of another state will be enforced against a resident stockholder of Wisconsin only when the remedy provided for that purpose may be properly enforced by the courts of the state without prejudice to its own citizens. A doctrine which is approved by the same court in the decision of the case at bar.

In *Fourth National Bank v. Francklyn*, 120 U. S. 747, it is said: "Where the statutes of the state which creates a corporation, making the stockholders liable for the corporate debts, provide a special remedy, the liability of a stock-

holder can be enforced in no other manner." The same doctrine is stated in *Pollard v. Bailey*, 20 Wall. 520.

Mr. Thompson in his Commentaries on the Law of Corporations discusses the statutory liability and its enforcement at considerable length. He says (§ 3055): "We may, then, collect considerable judicial authority to the effect that where the statute governing the corporation creates an individual liability on the part of its stockholders for its debts, and prescribes a remedy to enforce the same by a suit in equity brought on behalf of all the creditors in which the corporation itself and all the stockholders within reach of the process of the court are made parties, no separate action of any sort, whether at law or in equity, can be maintained, in a state other than that of the domicile of the corporation, against any of its stockholders, however numerous, to charge them with such individual liability. The Supreme Judicial Court of Massachusetts has finally settled upon this doctrine, and has reaffirmed it in recent cases in the following language: 'This court does not take jurisdiction of a suit to enforce this liability of stockholders in a foreign corporation, not because it would be a suit to impose a penalty, or a suit opposed to the policy of our laws, but it is a suit against a foreign corporation which involves the relation between it and its stockholders, and in which complete justice can be done only by the courts of the jurisdiction where the corporation was created.'"

The courts of Minnesota have enforced the statutory liability there created within their own jurisdiction, but they have not enforced a statutory liability created by the legislature of another state against citizens of their own state, or even the common law liability of the stockholders of a foreign corporation, resident in that state.

First National Bank v. Gustin, etc., Mining Co., 42 Minn., 327, was a suit to enforce the liability of a stockholder in a foreign corporation for unpaid subscriptions, and it was there held that the remedy was governed by the law of the forum and that the liability could not be enforced in that state for reasons stated.

Rule v. Omega S. & G. Co., 64 Minn., 326, was a suit by a creditor of an insolvent foreign corporation to enforce the

common law liability of a stockholder. It was there held that the remedy provided by the Minnesota statute was not applicable where it was sought to reach such unpaid subscriptions to the stock of a foreign corporation.

The doctrine with respect to the nature of the statutory liability and the remedy for its enforcement as stated in the authorities above cited was announced by the Supreme Court of Minnesota in *Allen v. Walsh*, 25 Minn. 543, decided in 1879, and stood as the rule of law affecting property rights of stockholders in corporations of that state until long after the Farmers & Merchants State Bank was organized, after the stock had been subscribed for, after the debts had all been contracted, after its affairs had been wound up, and until after this suit was commenced to enforce this statutory liability of the stockholders. It was distinctly held in *Allen v. Walsh* (p. 552) that this liability "is purely a statutory one. It arose out of no contract between the parties, other than that implied by the statute, and it is for no debt contracted by the defendant, either as principal or surety; it exists wholly by force of the provisions of the statute which created it, and which alone determines its characteristics and incidents." It is a liability of all the stockholders to all the creditors of the bank. It is further held (p. 553) that the extent of the liability is limited to the amount of the stock held by the stockholders, "though within this limit it is an absolute and unconditional one, which attaches immediately upon the creation of the corporate debt, for which he is answerable to the creditor as upon an original indebtedness." Being created for the benefit of all the creditors, if the bank is insolvent they have a right to participate in proportion to the amount of their claims in whatever proceeds may be realized from the total liabilities, "As between the bank and its stockholders, the former stands in the position of the principal debtor, primarily responsible for the corporate debts, and liable to reimburse the latter for any payments made by them upon account of its obligations. As between the stockholders themselves, the equitable right of contribution exists," etc. The remedy there prescribed is by a single action in which all the creditors shall be joined or represented against all the

stockholders. The doctrine stated in the foregoing decision is fully supported by other Minnesota decisions, but is attempted to be qualified by the case of *Hanson v. Davison*, decided July 26, 1898, 73 Minn. 454, 76 N. W. 254. There is a very able dissenting opinion by Mr. Justice Canty in which reference is made to the former decisions of the Supreme Court of Minnesota, and the decisions of other courts supporting the doctrine of *Allen v. Walsh*. The Minnesota decisions are also reviewed by Mr. Justice Marshall in the opinion upon the first appeal. (Trans. p. 45.)

Hanson v. Davison, 73 Minn. 454, furnishes counsel for plaintiffs in error the only ground for the contention that the courts of Wisconsin have denied a Federal right in dismissing this suit. That was an action to enforce the statutory liability of a stockholder in a Minnesota corporation against a non-resident who had property in the state, and it was held that a separate action could not be maintained as the property could be sequestered in the original suit. With respect to that case it is to be observed that the property of the defendant situated in Minnesota had been attached, and the defendant had appeared in the action. It was there held that while the liability was several the stockholders might, and upon equitable grounds ought to be joined in one action for its enforcement. The remedy is therefore joint as to procedure. It is not a liability that can be enforced by one creditor against any single stockholder. However, it is said an ancillary proceeding may be instituted to reach the property of the stockholder which has been discovered subsequent to the decree. This, of course, has reference to property situated within the jurisdiction. The court say in the opinion that there is no difference in principle between an action to enforce unpaid subscriptions and one to enforce a stockholder's liability, and that a judgment against the corporation is an individual judgment against the stockholders in their corporate capacity. This overlooks entirely the distinction with respect to the two liabilities recognized by all the courts including that of Minnesota in numerous decisions. The unpaid subscription is an obligation arising from contract and must be recovered in the right of the corporation. *Gager v. Paul*, 111 Wis. 638. The statutory liability can-

not be enforced by the corporation or through its right or by its assignee or receiver. It is an obligation of the stockholders to the creditors, and must be enforced for the benefit of the latter in a proper proceeding instituted for that purpose, to which all the stockholders and creditors must be made parties as shown by the authorities cited and in the decision of this case by the Supreme Court of Wisconsin. To the same effect is *Coleman v. White*, 14 Wis. 700; *Gager v. Marsden*, 101 Wis. 598; *Booth v. Dear*, 96 Wis. 516; *Terry v. Little*, 101 U. S. 216.

The judgment fixing the liability of stockholders in the Minnesota court was entered April 28, 1897 (Trans. p. 26), more than a year prior to the decision of *Hanson v. Davison*. The Supreme Court of Wisconsin in holding that the rights of the defendant were to be determined by the state of the law as construed by the highest court of Minnesota at the time the contract was entered into, and the liability became fixed is supported by repeated decisions of this court. The rights of the creditors and stockholders had been finally determined by that judgment under the statutes and decisions of the Supreme Court of Minnesota, then existing, and the obligations of the stockholders could not thereafter be enlarged by a subsequent decision in another cause by the Supreme Court of Minnesota construing this statute.

The settled construction of a statute, so far as contract rights thereunder are acquired, is as much a part of the statute as the text itself, and a change of decision is the same in its effect on pre-existing contracts as a repeal or an amendment of a legislative enactment. *Douglass v. Pike County*, 101 U. S. 677; *Rowan v. Runnels*, 5 How. 134; *Gelpcke v. Dubuque*, 1 Wall. 175; *Chicago v. Sheldon*, 9 Wall. 50; *Olcott v. Supervisors*, 16 Wall. 678; *Chicago Life Ins. Co. v. Needles*, 113 U. S. 574; *Anderson v. Santa Anna*, 116 U. S. 356; *Bostwick v. Brinkerhoff*, 106 U. S. 3; *Johnson v. Kieth*, 117 U. S. 199; *German Bank v. Franklin Co.* 128 U. S. 526, 539; *Knox Co. v. North National Bank*, 147 U. S. 91, 99; *Bacon v. Texas*, 163 U. S. 207, 221; *Wade v. Travis Co.* 174 U. S. 499, 509; *Loeb v. Columbia Township Trustees*, 179 U. S. 472.

The question here involved is not one of local law to be

settled by the decisions of the Minnesota court, but is one of general law to be determined by reference to all the authorities, and a consideration of the principles underlying the contract relations between the parties. *Baltimore & Ohio R. R. Co. v. Baugh*, 149 U. S. 368.

III.

Plaintiffs have not the Legal Capacity to Sue.

The second ground of demurrer relates to the capacity of the plaintiffs to maintain this action, and especially to the power of A. C. Finney as receiver to maintain the suit. It seems very clear upon principle and authority that he has not such capacity, and it is sufficient upon this point to refer to the recent decision of the Court of Appeals for the second circuit, decided May 16th, 1902, and reported in the advance sheets, 117 Fed. Rep. 220. There the plaintiff as receiver for the collection and enforcement of the liability of stockholders of a moneyed corporation organized under the laws of Minnesota, brought an action at law against the defendant as a stockholder of such corporation to recover the amount of the statutory liability. The constitution and statutes of Minnesota were set out in the complaint, and it was alleged that a judgment had been rendered in the Minnesota court against the resident stockholders and appointing a receiver to take the necessary steps against non-resident stockholders for the enforcement of their liability, and to that end to institute and prosecute all such actions or proceedings in foreign jurisdictions as might be necessary or appropriate. The proceedings in the Minnesota court were substantially the same as set forth in the complaint in this action and the authority conferred upon the receiver was of the same character. The only difference in the two suits is this: there the receiver alone sued the stockholder in an action at law, while here he has joined the creditors with him and sued in equity, but this distinction is immaterial. The Court of Appeals held that the receiver could not maintain the action. It is said (p. 224): "His rights, if

any, rest wholly upon the order and decree in the Rogers' case. Without regard to the nature of the claim asserted against the defendant, the plaintiff has no relation to that claim otherwise than through such order and decree. He is not the assignee of all or any of the creditors. He has no title to anything, so far as appears, except to his office of receiver. The order and decree, in terms, make him a mere agent of the Minneosta court. That court undertook to authorize him to sue non-residents in other jurisdictions; moneys collected to be 'held by him subject to the further order of this court (the Minnesota court) in the premises.' The Minnesota court thus attempted to send its agent to collect money by suit outside of its jurisdiction, and bring it back to be disposed of as it might direct. If it had had power to transfer the claim against the defendant to the plaintiff, and had in fact so transferred it, he could assert the title thus acquired and sue upon such claim here in accordance with the principles stated in *Association v. Rundle*, 103 U. S. 222. Apparently the court had no such power. Whether it had or not, it did not attempt to exercise it. It transferred nothing to the plaintiff. It merely appointed him its own agent to collect and hold subject to its order. He was made an arm of the court, with which the court attempted to reach outside of its territorial jurisdiction, and the attempt, it seems to us, was futile. The court could not reach beyond the limits of its jurisdiction through a receiver any more than it could through a marshall or a sheriff. The authority which it sought to give to the plaintiff became a dead letter when he passed beyond the boundaries of the state." The court cites in support of this doctrine *Booth v. Clark*, 17 How. 322, and quotes from that opinion.

It is further said (p. 225): "The court cannot take in execution property not within its legal jurisdiction. A creditors' bill, by which equitable assets can be reached, is a substitute for the common-law execution, and can be brought only in the same jurisdiction," citing *Tube Works Co. v. Ballou*, 146 U. S. 517. Numerous decisions are cited in the opinion in support of the proposition that an officer acting merely as an arm of the court cannot sue beyond its jurisdiction.

We may safely conclude therefore that the receiver as such had not the legal capacity to sue in the Wisconsin courts. The same rule had been adopted and applied in Wisconsin long before this suit was brought. *Filkins v. Nunnemacher*, 81 Wis. 91.

The objection that the receiver is made a co-plaintiff with the creditors when he has no interest in the cause of action may be taken by demurrer for the reason that no judgment could be given against him if the defendant should succeed. *Reed v. Sang*, 21 Wis. 678; *Pier v. Fond du Lac*, 53 Wis. 421; *Schiffer v. Eau Claire* 51 Wis. 385.

The other plaintiffs who were not judgment creditors of the insolvent corporation could not maintain this action in the Wisconsin courts. We do not question the rule that a general creditor may bring suit in behalf of himself and all others to enforce the liability of stockholders of an insolvent corporation in the courts of Wisconsin and to enforce the statutory liability created by the statutes of the state where all the stockholders are made parties. *Sleeper v. Goodwin*, 67 Wis. 577, sustains this practice but states that it is an exception to the general rule. Such a suit cannot be maintained against a single stockholder as the Supreme Court of Wisconsin has repeatedly decided as shown by the opinion in this case. (Trans. p. 45.)

A suit to reach equitable assets can only be maintained by a creditor who has recovered judgment and whose execution has been returned unsatisfied under the Wisconsin code and practice. *The North Hudson Mut. Bldg. & Loan Association v. Childs*, 86 Wis. 292; *Weber v. Weber*, 90 Wis. 467; *The Northwestern Iron Co. v. The Central Trust Co.* 90 Wis. 570. The same rule has been recognized and enforced by this court. *Case v. Beauregard*, 99 U. S. 119.

The Supreme Court of Wisconsin therefore might well have sustained this demurrer and dismissed the action upon the ground that the plaintiffs had not legal capacity to sue, a matter relating solely to the procedure in the state court and not involving a Federal right.

IV.

The Misjoinder of Causes of Action.

This suit as brought embraces two distinct causes of action, one in favor of the receiver against the defendant, and one on behalf of certain creditors against her; one against her individually and one against her as executrix and sole residuary legatee of Charles V. Guy, deceased. The suit by the creditors, if it could be maintained at all, would be in equity under the rules established by the courts of Minnesota and Wisconsin as appears by the authorities already referred to; the suit by the receiver in the Wisconsin court, if it could be maintained at all, would be a straight action at law. *Gilman v. Gross*, 97 Wis. 224, 229; *Hale v. Hardon*, 37 C. C. A. 240, 95 Fed. 747. It cannot be seriously contended that an action at law in favor of one party may be joined with a suit in equity in favor of other parties, to enforce liabilities against the defendant.

It is not permissible under the Wisconsin code to join in one complaint causes of action which do not affect all the parties thereto. Wis. Stats. 1898, § 2647.

Haxarden v. The Youghiogheny & Lehigh Coal Co., 111 Wis. 545 p. 552, condemns a complaint of similar character upon the ground of misjoinder. It is said (p. 552): "The statute provides that causes of action, in order to be united in one complaint 'must affect all the parties to the action.' Stats. 1898, sec. 2647. It is clear that this limitation would be violated if the two causes of action in this complaint are allowed to be united in one complaint. The first cause of action is a straight action at law for damages to the plaintiff alone. No one else has any interest in the judgment in that action whatever it be. But the second cause of action is a cause of action in favor of a large number of persons, constituting a class represented by the plaintiff. Potentially all of the class are parties. They are invited to become formal parties plaintiff, and presumably will accept the invitation. Thus the first cause of action affects but one party plaintiff, whereas the second cause of action affects numerous parties plaintiff. The

doctrine is frequently stated that the several causes of action for or against a person must affect him in the same capacity in order to make them capable of being joined. Pomeroy, Code Remedies (3d ed.) § 502.

"These considerations are conclusive to the effect that the general demurrer to the whole complaint on the ground of improper joinder should have been sustained."

The Wisconsin decisions are collected in a note to section 2647 and a further reference to them seems superfluous.

The order appointing the receiver authorizes him to bring suit against the "above named defendants" who are non-residents. (Trans. p. 31.) Attention has already been called to the fact that Charles V. Guy who had been dead for five years was named as a defendant, who held stock in the insolvent bank, and that Mary A. Guy as executrix or residuary legatee was not named or referred to in any manner in the proceeding. Under the terms of the order the receiver was not therefore authorized to sue her in her representative capacity or as residuary legatee. We do not here contend that the claim should have been filed against the estate of the deceased stockholder, but concede that under proper circumstances the defendant might have been made a party to a suit against all the stockholders either as executrix or residuary legatee. *Gianella v. Bigelow*, 96 Wis. 185; *Gager v. Paul*, 111 Wis. 638. The contention here is that she was not named as a stockholder in her representative capacity in the judgment entered by the Minnesota court, and consequently was not even constructively a party. *Gager v. Paul*, 111 Wis. 638, 646. If the demurrer had been sustained upon the ground that there was a misjoinder of causes of action, as it might well have been, then no Federal right would have been involved.

V.

The Bar of the Statute.

The complaint in this action is verified before a notary in Hennepin county, Minnesota, March 27, 1899 (Trans. p. 32), and in the usual course could not have been delivered

to the sheriff earlier than March 28, 1899. The date of its receipt and service does not appear in the transcript but can be ascertained by reference to the record. The complaint alleges that the total indebtedness of the insolvent bank on June 20, 1893, was the sum of $91,255.84, and of that amount $40,320.00 accrued prior to March 17, 1893, and the remainder prior to June 15, 1893. (Trans. p. 27.) Under the Minnesota statute a suit to enforce a liability created by statute must be brought within six years after the right of action accrues. Gen. Stats. 1878, p. 707. It is the same limitation as prescribed by the Wisconsin statute, subdivision 4, section 4222. "Accrued" is defined by Mr. Anderson in his Law Dictionary as "due and payable." This word is employed in the complaint and in the statute and will therefore have the same interpretation. It conclusively appears from the complaint that nearly one-half of the indebtedness represented by the plaintiffs accrued more than six years prior to the commencement of this action.

Under the Wisconsin Code it is a ground for demurrer "that the action was not commenced within the time limited by law." Wis. Stats. 1898, § 2649. In this case, however, it was not necessary for the bar of the statute to be pleaded by the defendant as it was incumbent upon the plaintiffs, suing as general creditors, to negative this defense and to show affirmatively that they were entitled to maintain the action.

The statutory liability of stockholders in manufacturing corporations, created by § 1769 Wis. Stats. 1898, in favor of laborers and other employees was under consideration in *Sleeper v. Goodwin*, 67 Wis. 577, 586, and it was there held that one creditor might sue on behalf of himself and all others similarly situated, but that it was incumbent upon the plaintiff to show that he belonged to the particular class for whose benefit the statute was enacted; and it was held in the same case that the six years statute of limitations applied to the right of action. The fact that a creditor who has not recovered judgment against the corporation may bring the suit, emphasizes the rule that he must show affirmatively in the complaint that he has a right to sue. It is to be remem-

bered that the liability created by statute in favor of creditors against stockholders is immediate and direct, and attaches when the debt is contracted under both the Minnesota and Wisconsin statutes. In *Sleeper v. Goodwin*, (p. 588) it is said: "This court at an early day determined that an action to enforce a statutory liability against the stockholders of a corporation should be an action in equity, in which the plaintiff should proceed on his own behalf, and also in the behalf of all other creditors having similar claims against all the stockholders who were liable to them under the law." As already stated some of these plaintiffs have not similar claims with the others, and in fact have no claim at all against this defendant as a stockholder. They show no right therefore to maintain this suit or to join in its prosecution. The rule here would be the same as in an action against an indorser upon a negotiable instrument where it is incumbent upon the plaintiff to allege that proper notice of dishonor had been given in order to fix the liability of the defendant. *Continental National Bank v. McGeogh*, 73 Wis. 332. In this case therefore, it was incumbent upon the plaintiffs to show that they had a subsisting, valid claim against the defendant growing out of the liability created by the statute of Minnesota and their right to jointly maintain the suit to recover the amount thereof.

The complaint in such an action is strictly construed, and it is fatally defective if it fails to state the facts which lay the foundation for enforcing the liability and the plaintiffs' right to maintain the action. 3 Thompson on Corporations §§ 4337–4338; *Germania Iron Co. v. King*, 94 Wis. 439; *Seaman v. Goodnow*, 20 Wis. 27.

Without the material averments above indicated the complaint failed to state a cause of action, and the demurrer might well have been sustained upon that ground.

Counsel for plaintiffs insists (Brief, p. 25) that the right of action is not barred by the statute of limitations "for the commencement of proceedings tolled the statute both as to the bank and the stockholders." He cites in support of the proposition two decisions of the supreme court of Minnesota, the first decided July 5, 1901, and the second at a later date, but they are entitled to no consideration.

These decisions were not pleaded and the presumption is that the law of Minnesota is the same as in Wisconsin. *Rape v. Heaton*, 9 Wis. 301; *Walsh v. Dart*, 12 Wis. 635; *Osborne v. Blackburn*, 78 Wis. 209; *St. Sure v. Lindsfelt*, 82 Wis. 346, 531; *MacCarthy v. Whitcomb*, 110 Wis. 113, 123.

As already stated the commencement of proceedings against the corporation in Wisconsin did not toll the statute as to the stockholders. *Gager v. Paul*, 111 Wis. 638, 647; *Levy v. Wilcox*, 96 Wis. 127.

Mr. Thompson in his Commentaries on Corporations, §3079, states that where the liability of the stockholder to the creditor is immediate and direct that the statute of limitations begins to run in favor of the stockholder from the time when the debt was contracted, but this is not so where the statute requires a creditor to exhaust his remedy against the corporation before he can sue the stockholder.

Olson v. Cook, 57 Minn. 552, 59 N. W. 635, is one of the cases brought to the attention of the Supreme Court of Wisconsin in the plaintiffs' complaint. (Trans. p. 23.) The court there holds that the creditors of an insolvent bank may bring an action to enforce the statutory liability upon its failure immediately and without awaiting the result of the insolvency proceedings to ascertain the amount to be collected. It is also alleged in the complaint that this liability is direct to the creditors; that it is not necessary for the creditors to procure a judgment against the bank before commencing a suit to enforce the stockholders' liability; that liability of stockholders is a primary and principal one and not as surety for the corporation. (Trans. p. 25.)

An examination of the cases cited by counsel for plaintiffs in 84 Minnesota shows that the court there sustained assessments made upon stockholders under the provisions of Chapter 272, Laws of 1899, approved April 18, 1899, sometime after this action was commenced, and which expressly provides that it shall not apply to pending actions. This law is entitled "An act to provide for the better enforcement of the liability of stockholders of corporations." It provides that when an assignment has been made by the corporation, or a receiver appointed, in an action against it, the court may, upon the notice therein pre-

scribed, proceed to levy an assessment upon the stockholders. The decisions based upon this statute do not undertake to overrule former decisions of the court. It is worthy of notice that this statute authorizes a receiver to be appointed by the court to bring actions in the courts of any state or country to enforce the assessment made upon the stockholders, indicating that in the opinion of the legislature at least the statutes previously in force would not support an action in a foreign jurisdiction.

VI.

The Complaint does not State a Cause of Action.

Much that has been said under the last four heads of this brief relates as well to the sufficiency of the complaint as to the questions there under consideration. The opinion of the Wisconsin Supreme Court in this case (Trans. p. 45) has treated this subject so ably and so fully that further argument is hardly necessary. We shall here refer only to one point not there considered. The complaint refers to the order of the court appointing the receiver, and a copy is annexed thereto and made a part thereof. This order authorizes the receiver to compromise and settle claims against stockholders "if he shall deem it advisable and to the best interests of the plaintiff and the creditors who have joined as parties plaintiffs in this action." (Trans. p. 31.) It is further alleged that the receiver had compromised and settled the liabilities of certain stockholders therein named "who were non-residents of the state of Minnesota and not within the jurisdiction of said court and against whom no judgment was entered." (Trans. p. 29.) It is further averred that composition settlements had been made with certain stockholders who were named as defendants in the suit. (Trans. p. 28.) It therefore appears that there were stockholders of the bank who were not parties to the suit in the Minnesota court, where the judgment was entered, and that they had been released, thereby cutting off the right of contribution of this defendant should the liability against her be enforced.

This proceeding is of a much more flagrant character

than that condemned by the court in *Great Western Tel. Co. v. Burnham*, 79 Wis. 47. There the circuit court for Cook county, Illinois, had levied an assessment upon the stockholders of the corporation for their unpaid subscriptions without regard to the amount levied and collected under a prior assessment. The fund realized upon the first assessment was not sufficient to pay all the debts. Some years afterwards, the court directed a second assessment to be made uniformly upon all the stockholders, which, for the reason stated, was unequal in its character. A suit to enforce the second assessment against a stockholder in Wisconsin was commenced in the circuit court for Milwaukee county. The complaint contained a full statement of the facts and it was demurred to and the demurrer was finally sustained by the supreme court. It there affirmatively appeared upon the face of the complaint that some of the stockholders had paid forty per cent. of their subscriptions and some only two per cent., and that the assessment sued upon was a horizontal assessment of thirty-five per cent. upon all. This was held to be conclusively unequal and unfair, and that the plaintiff had by his own allegations impeached and discredited the decree of the court notwithstanding the fact that the assessment was made by a court of competent jurisdiction. The decree of the Minnesota court is less worthy of credit, for instead of making the settlement it delegated the power to the receiver to make such compromises as to him should seem advisable. The Illinois court had not attempted to discharge or release the stockholders who had been favored but they were still subject to suit for contribution by any stockholder who might pay more than his share. Here the Minnesota court has discharged the stockholders with whom settlements had been made, and debarred the defendant from enforcing any claim for contribution in case she is required to pay the full amount of the liability. In answer to this objection it may be urged that it appears from the complaint that the indebtedness represented by the plaintiffs exceeds the entire amount of the statutory liabilities, but this entirely ignores the bar of the statute of limitations to a large portion of the alleged indebtedness. The court can indulge no presumption in support of

this complaint to the effect, that if to the claims released by composition are added those which have been barred by the statute as to the defendant, the amount remaining will equal the liability of all the stockholders. The extent of the liability of this defendant, and the right of the plaintiffs to enforce it, lies at the very threshold of this suit; and if the complaint does not by proper averment set forth a valid, subsisting claim against the defendant which she ought in equity to pay ratably with the other stockholders, and the enforcement of which will not prejudice her rights, it fails to state a cause of action. If the procedure adopted will not enable the court to ascertain the amount of subsisting claims and to enforce payment upon equitable principles and preserve the rights of the defendant as against the other stockholders, then the remedy provided is inadequate and cannot be enforced in a foreign jurisdiction under the authorities already referred to.

Counsel for plaintiffs makes the contention that the provision of the constitution of Minnesota, which is referred to on page 7 of his brief, imposing individual liability upon stockholders for debts of the bank, is self-executing and cites *Whitman v. Bank*, 176 U. S. 559, in support of the proposition. A sufficient answer to this argument, put forth here for the first time, is that the constitution of Minnesota is not pleaded and could not therefore be considered by the Wisconsin court as establishing the right or regulating the procedure. The plaintiffs in their complaint set out the provisions of the general statutes of Minnesota of 1878 and of 1894 as creating the liability and making provision for its enforcement. (Trans. pp. 22, 23.) Among the cases there cited as bearing upon the right and the remedy is *Allen v. Walsh*, 25 Minn. 543, decided in 1879, and the statutes as there construed determined the right of the creditors and stockholders of this corporation as has already been stated.

Whitman v. Oxford National Bank, 176 U. S. 559, does not support the contention of counsel that the provision of the constitution as before the court is self-executing in so far as the procedure is concerned. The court there had under consideration the Kansas constitution and statutes

and it was held that the constitution is self-executing in so far as it makes provision for the liability of the stockholder. (p. 562.) It is further said (p. 563): "But this constitutional provision does not stand alone. The legislature of Kansas has acted on the subject matter, and the constitution and statutes are to be taken together, as making one body of law; and it serves no good purpose to inquire what rights and remedies a creditor of a corporation might have or what liabilities would rest upon a stockholder if either constitution or statutes stood alone and unaided by the other." While the constitution therefore may create the liability the procedure for its enforcement must be governed by the statutes of the state.

In *Allen v. Walsh*, 25 Minn. 543, the supreme court of Minnesota declared that the only remedy for enforcing the statutory liability was that provided by the general statutes of the state there referred to which "contemplated a single action in which all persons having or claiming any interest in the subject matter of the action shall be joined or properly represented, and the respective rights, equities and liabilities finally settled and determined." (p. 556.)

It is respectfully submitted that the writ of error should be dismissed, or the judgment of the Supreme Court of Wisconsin affirmed.

Dated January 5, 1903.

R. M. BASHFORD,

Attorney for Defendant in Error.

MADISON, WISCONSIN.

Supreme Court of the United States.

No. 180.—October Term, 1902.

A. C. Finney, as Receiver, et al., Plaintiffs in Error,
vs.
Mary A. Guy, &c.

In error to the Suprem Court of the State of Wisconsin.

[April 6, 1903.]

This action was commenced in a proper court of the State of Wisconsin to enforce the shareholders' liability under a Minnesota statute, in a corporation of Minnesota and doing business in that State. The defendant demurred to the complaint on the ground, among others, that it did not state facts sufficient to constitute a cause of action. The demurrer was overruled by the trial court and judgment given for the plaintiff, which was reversed by the Supreme Court of the State, and the case has been brought here by plaintiff to review the judgment of reversal.

The facts alleged in the complaint are in substance these: That during all the times therein mentioned the American Savings and Loan Association, one of the plaintiffs herein, was a corporation organized under the laws of the State of Minnesota, and on June 18, 1896, William D. Hale, another plaintiff in this action, was appointed receiver thereof; that the Farmers' and Merchants' State Bank was, on June 6, 1888, a banking organization, by virtue of the laws of the State of Minnesota, and doing business as such; that the bank became insolvent in June, 1893, and the entire net proceeds of the bank's assets amounted to the sum of $12,539.95, all of which had been paid over to the State of Minnesota on account of the indebtedness of the bank to the State of over $28,000, which was a preferred claim under the laws of that State; that its other debts amounted to the sum of more than one hundred thousand dollars, and it had no property to satisfy the same; that the defendant, Mary A. Guy, a resident of the State of Wisconsin, was the owner of three shares of the capital stock of the bank in her own right, and that she owned sixteen shares of the stock of the bank as executrix of the will of her husband and as legatee thereunder.

It was then averred that suit had been commenced in Minnesota in 1894 to enforce the liability of the stockholders of the bank under and by virtue of the laws and constitution of the State of Minnesota; that such suit had been commenced by the American Savings and Loan Association, which was a creditor of the bank, in behalf of itself and all other creditors who should come in and make themselves parties to the suit and prove

their claims therein, and against all the stockholders of the bank, process was, however, not served on this defendant, but only on those residing within the State; that such proceedings were had in the suit that judgment was duly rendered therein on April 28, 1897, in favor of the complainant, the American Savings and Loan Association, for the amount of the indebtedness of the bank to it, and also in favor of the other creditors of the bank, who had duly intervened, for the various amounts due them from the bank. It was also adjudged that the amount of the debts of said bank aggregated the sum of $106,471.71.

It was then further averred in the complaint that Finney (one of the plaintiffs herein) was appointed receiver in the Minnesota suit for the purpose of collecting and enforcing the respective liabilities of the defendant stockholders, and that an order had been made authorizing and empowering him to proceed against those of the defendant shareholders residing in other jurisdictions in such other jurisdictions, for the purpose of enforcing the liabilities of such shareholders, and with full power and authority to distribute the proceeds of such action among the parties entitled thereto, after final payment in full, out of the proceeds, of the costs and expenses incurred, &c. It was then averred that pursuant to the instructions of the Minnesota court, Finney, as receiver therein, commenced this action against Mary A. Guy, and joined with him as plaintiffs all the creditors of the bank who had proved their claims in the Minnesota suit, and it was also averred that Mrs. Guy was liable to the creditors of the bank in the sum of $3,800, double the amount of the par value of the three shares owned by her individually and of the sixteen shares formerly owned by her husband, and that she was the only stockholder who was a resident of Wisconsin, and therefore the only defendant in the case, and that the full amount of her double liability, if recovered, would be wholly insufficient to pay the indebtedness of the bank after applying everything that could be collected from all the other stockholders, some of whom were insolvent, some had been compromised with and from others nothing could be collected.

The complaint then set forth several sections of the General Statutes of the State of Minnesota of 1878, among them being sections 5905, 5906, 5907 and 5911, and it was averred that this action could be maintained by reason of such sections. They are the same as are set forth in *Hale* v. *Allinson*, (188 U. S. .) It was then averred that decisions in the courts of the State of Minnesota had been rendered relating to the liability of stockholders under those statutes, in corporations organized under the laws of that State, as to the proper method of enforcing such liability. The complaint then referred to some twenty different decisions in the State courts of Minnesota by titles and gave a reference to the volumes in which they were reported, and it then stated what the law of Minnesota was

under those decisions and statutes, as to the liability of stockholders, and the manner in which that liability could be enforced and the effect of a judgment recovered in a State court by a creditor in his own behalf and in behalf of all others similarly situated, and it averred that a judgment such as was obtained in the Minnesota suit was conclusive upon stockholders, even though they were not parties thereto, as to all questions of indebtedness of the bank and who were its creditors, and that defendant, though not served with process in that suit, was concluded by the judgment as to her liability as shareholder, except as therein stated. It also averred that after such a judgment had been obtained the Minnesota decisions held that under those statutes a suit could be maintained in the courts of another jurisdiction, similar to the one before us, and the complaint ended with a prayer for judgment that the defendant should pay the plaintiff the sum of $3,800, with interest thereon since April 28, 1897, and that A. C. Finney, one of the plaintiffs, be appointed receiver herein, to collect the amount and distribute the same pro rata among the other plaintiffs.

Mr. Justice PECKHAM, after making the foregoing statement of facts, delivered the opinion of the Court.

The demurrer raises the question whether the complaint states facts sufficient to constitute a cause of action. The plaintiffs contend that their cause of action is based upon the decisions and judgments of the courts of the State of Minnesota, and upon the statutes of that State, and that the Wisconsin Supreme Court in sustaining the demurrer has thereby failed to give that full faith and credit to the laws and judgments of the State of Minnesota and its courts which they receive in that State and which they are entitled to under the Constitution and laws of the United States, and that by reason thereof a Federal right has been denied them.

They urge that, under the judgment of the *American Saving & Loan Association* v. *Farmers' & Merchants' State Bank*, which was recovered in the Minnesota court, and is referred to in the foregoing statement of facts, the defendant is concluded as to her defense to the same extent she would have been had she appeared and contested her liability in the Minnesota courts, and that as a consequence the Wisconsin courts are bound to give the same effect to that judgment in their courts that it has in the courts of Minnesota; that if such effect had been awarded that judgment, then this action could have been maintained; and the Wisconsin court in sustaining the demurrer denied such effect to the judgment, which was a violation of a right founded upon the Federal Constitution.

It is stated by the Supreme Court of Wisconsin that that State for many years has had a statute for the enforcement of the liability of stockholders in corporations similar to that which exists in Minnesota, and that it had

been frequently decided under such statute that an action of the nature of the one at bar could not be maintained in her courts, and also that it was against the public policy of Wisconsin to permit it; that the remedy under the Wisconsin statute was exclusive, and consisted in a suit in equity at the home of the corporation, in the nature of a partnership accounting, the parties to which would be all the creditors or a creditor in his own behalf and in behalf of all others similarly situated who would come in and make themselves parties, and the stockholders who could be served with process in the State.

Whether a cause of action is stated in a pleading, is generally to be decided with reference to the law of the State where the action is pending. If the State court hold that no cause of action is set forth in the pleading and that it is against the public policy of the State to permit an action for such a purpose, we should generally hold that there was no Federal question involved in such determination. The plaintiffs, however, urge that there is here an exception to that rule founded upon the considerations just stated, and that if under the Minnesota law this action could be maintained, the courts of Wisconsin are bound to entertain jurisdiction to the same extent. It is not, however, the case that every decision regarding the proper construction of the statute of another State, involves a Federal question. Where the case turns upon the construction and not the validity of the statute, a decision of that question is not necessarily of a Federal character. (*Johnson* v. *New York Life Insurance Company*, 187 U. S. 491, 496.) Without precisely determining just how far questions of this kind can in all cases be regarded as coming under the rule giving full faith and credit to the public acts, records and judicial proceedings of another State, depending, as such questions must, upon the particular facts of each case and the manner in which they are presented, we may, nevertheless, examine the contentions of the plaintiffs in error to see how far they are justified in the law.

After quite a full examination of the Minnesota decisions on the question, we have just decided in *Hale* v. *Allinson*, (188 U. S. ,) that a receiver appointed in Minnesota, under these same statutes, could not maintain an action outside of that State to enforce the liability of a stockholder, and it was said that the courts of Minnesota had held the same thing for many years. An examination of the decisions of the Minnesota courts shows that they had held that the remedy provided by the statutes of the State for the enforcement of stockholders' liability was a suit in equity in that State by a creditor in his own behalf and that of all other creditors, against all the stockholders of the corporation, or so many of them as could be served with process, and that it was exclusive, and no other remedy could be availed of even within the jurisdiction of the courts of Minnesota. That being the law of Minnesota, it would, of course, pre-

vent an action outside the State, by a receiver as well as by any other plaintiff, to enforce the stockholders' liability. Hence, in the *Hale-Allinson case*, we held the receiver could not maintain such an action in a foreign jurisdiction and in a Federal court.

The case of *Allen* v. *Walsh*, (25 Minn. 543,) has been cited as sustaining this rule. Many other cases have been cited as holding the same rule, an exclusive remedy under the statute and to be pursued only in the courts of the State. *Allen* v. *Walsh* does hold (and it has been followed by many others to the same effect) that the only remedy is that created by the statute, and that remedy is an action in equity in the home courts wherein all the creditors and all the stockholders are parties, or as many of the latter as can be served, and in that action all the rights of the different parties can be adjusted. The remedy being exclusive, the statute must be followed, and the result is that no other action to enforce the liability can be availed of in another State. This would call for an affirmance of the judgment but for the claim now urged by counsel for plaintiffs, that the case of *Allen* v. *Walsh* has been overruled by subsequent cases in Minnesota, and that the law is correctly set forth in the complaint. He calls attention to the fact that this case has not gone to trial upon an issue of any question of fact, but the questions to be determined have arisen on demurrer to the complaint; that the complaint avers as a fact that by the law of Minnesota such an action as this can be maintained in the courts of a foreign jurisdiction after a judgment has been recovered in an action in the State court, such as is referred to in the complaint, and that the defendant by demurring admits that the law is as stated in the complaint, and therefore the court is bound to give effect to the law of Minnesota such as is set forth in that pleading. This is too broad a claim to be maintained.

If the case had been on trial upon issues of fact, among them being one as to what the law of Minnesota was, and the statutes as well as the decisions above mentioned had been proved and a witness learned in the law of Minnesota had testified what such law was, as deduced by him from those statutes and decisions, his testimony would not, even though uncontradicted, conclude the court upon that issue. Although the law of a foreign jurisdiction may be proved as a fact, yet the evidence of a witness stating what the law of the foreign jurisdiction is, founded upon the terms of a statute, and the decisions of the courts thereon as to its meaning and effect, is really a matter of opinion, although proved as a fact, and courts are not concluded thereby from themselves consulting and construing the statutes and decisions which have been themselves proved, or from deducing a result from their own examination of them that may differ from that of a witness upon the same matter. In other words, statutes and decisions having been proved or otherwise properly brought to the attention of the

court, it may itself deduce from them an opinion as to what the law of the foreign jurisdiction is, without being conclusively bound by the testimony of a witness who gives his opinion as to the law, which he deduces from those very statutes and decisions.

It was stated by Mr. Justice Brewer, speaking for the court in *Eastern Building & Loan Association* v. *Williamson*, (188 U. S. ,) a case just decided and where the same question in substance was before us, as follows:

"But it is contended that the construction of the New York statutes as applicable to this contract was shown by the decisions of the courts of that State and the opinion of one learned in its laws; that there was no contradictory testimony, and, therefore, it was the duty of the South Carolina courts to find as a fact that such was the true construction."

This was the contention of the defendant, and then, after referring to the construction of the contract as contended for by the plaintiff, the justice continued:

"It is said that the promise made in the certificate is expressly based upon 'full compliance with the terms, conditions and by-laws printed on the front and back of this certificate;' that one of the conditions expressed on the face of the certificate is: 'The shareholder agrees to pay, or cause to be paid, a monthly installment of seventy-five cents on each share named in this contract, the same to be paid on or before the last Saturday of each month until such share matures or is withdrawn;' that it contained this further stipulation: 'Payable in the manner and upon the conditions set forth in said terms, conditions and by-laws hereto attached,' and that these matters thus referred to had the effect of changing the absolute promise to a conditional one. All these were received in evidence, and when so received it became a matter of judicial construction to determine whether they had such effect, and that was a question which, nothing else being shown, was for the consideration of the courts in which the litigation was pending. In like manner, after the decisions of the courts of New York were received in evidence, their meaning and scope became matters for the same consideration. While statutes and decisions of other States are facts to be proved, yet when proved their construction and meaning are for the consideration and judgment of the courts in which they have been proved. Nor is the rule changed by the testimony given in the deposition of defendant's counsel, for, as he states, his opinion is based on the statutes, the articles of incorporation and the decisions admitted in evidence, together with similar decisions of other States under like statutes, articles of incorporation and by-laws. No witness can conclude a court by his opinion of the construction and meaning of statutes and decisions already in evidence. (*Laing* v. *Rigney*, 160 U. S. 531.) The duty of the court to construe and decide remains the same."

This right and duty of the courts to themselves construe the statutes and decisions are not altered because the law of the foreign State and the various decisions of its courts are alleged to be as set forth in a pleading which is demurred to instead of being proved on a trial.

In this case the statutes together with references to the decisions of the State courts are given in the complaint, and the pleader, by making an

averment in the form of a fact, assumes to give a meaning to them such as he thinks to be correct, but the duty still remains with the courts to themselves determine from those statutes and decisions what is in truth the law of the foreign jurisdiction. The courts are not concluded by an averment of what is the law in a foreign jurisdiction, contained in a pleading which is demurred to, any more than they would be by the testimony of a witness to the same effect upon a trial; certainly not when the statute upon which the case rests is set forth and the decisions under it are also referred to as evidence of the law. The demurrer does not admit as a fact, that the construction (in the form of an averment of fact) which the pleader may choose to put upon those statutes or decisions is the right conclusion to be drawn from them. Notwithstanding the averments in the complaint we are brought to an examination of the statutes and decisions referred to, in order to ourselves determine what the law of Minnesota is.

We are unable to see that the case of *Allen* v. *Walsh*, (*supra*,) has been overruled upon the material point in this case, by *Hanson* v. *Davison*, (73 Minn. 454,) so as to call for a different decision than would be made under *Allen* v. *Walsh*, and the many similar cases. We have already referred to the *Hanson case* in *Hale* v. *Allison*, (*supra*,) and do not regard it as necessary to continue the discussion here. It is enough to say that it is no authority for the contention that the former cases are overruled further than the issue presented in the case called for. The right to bring into the original case in equity in the State court after judgment had been obtained therein, a stockholder who was not served with process in that suit, but who appeared after judgment and after his property had been attached, was asserted in and decided by the State court, but it did not decide that the remedy in the State court as provided in the statute did not continue to be exclusive, nor did the State court assume to decide that any further action could be maintained in the courts of a foreign jurisdiction to enforce the stockholders' liability. No such issue was involved in the *Hanson case*, and the opinion regarding such question is only the opinion of the very able judge who gave it, upon an abstract proposition, as distinguished from an adjudication upon a point actually in issue, and in that case, in speaking to that point, the judge only said he saw nothing in the statute to prevent such an action in the courts of another State, provided such courts would permit it. We think the law of Minnesota still remains upon this particular matter as stated in the former cases, which have not been overruled by *Hanson* v. *Davison*. This, in effect, has been held in the *Hale–Allison case*, which we have just decided.

Nor is this case controlled or covered by *Whitman* v. *Oxford National Bank*, (176 U. S. 559,) and *Hancock National Bank* v. *Farnum*, (Id. 640.) In the former case the special provisions of the Kansas statutes were

referred to. It was stated to be the law in Kansas that it only required a judgment against the corporation and an unsatisfied execution returned, after which any creditor could sue any shareholder wherever he could be found. There was no suit in equity in the nature of a partnership accounting necessary. The liability of the shareholder, although statutory in origin, was held contractual in its nature, and under the statute the cause of action was transitory and could be maintained in any tribunal having jurisdiction where process could be served upon the individual shareholder, and in such an action the latter could set off debts due him from the company. The Kansas cases, expressing these views, were referred to in the opinion.

In the second case it was again held that under the statute and the decisions of the Kansas courts, after a judgment had been obtained against the corporation and an execution returned unsatisfied, the individual creditor could maintain an action against a single stockholder in any court of competent jurisdiction. Having the right to maintain such action, it was held that when it was commenced in another State and in a proper court thereof, the judgment which was obtained in Kansas must have the same faith and credit given it in the courts of another State that was given it in Kansas. Neither case is applicable to the one before us. The statutes are radically different, and no one creditor can maintain the action under the Minnesota statute, and if all unite, they must sue in the courts of that State.

Whether, aside from the Federal considerations just discussed, the Wisconsin court should have permitted this action to be maintained, because of the principle of comity between the States, is a question exclusively for the courts of that State to decide. The right to maintain it under the facts of this case is not founded upon any provision of a Federal nature, and we cannot supervise the action of the Wisconsin court in this particular.

The judgment of the Supreme Court of Wisconsin must be

Affirmed.

Mr. Justice McKenna did not hear the argument and took no part in the decision of this case.

Mr. Justice Brewer dissented.

True copy.

Test:

Clerk Supreme Court, U. S.